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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.48 OF 2016

Eknath Ramdhan Rathod
Age - 33, Occ - Service
R/o Begumpura, Aurangabad
C/o Department of Pathology,
Government Medical College,
Ghati, Aurangabad,
Taluka and District - Aurangabda

APPLICANT

VERSUS

1. Rajshri w/o Eknath Rathod
Age - 30 years, Occ - Service
R/o C/o Ruplal Ratan Jadhav,
Mauli Nagar, Near Surya Lawns
Beed Bye-Pass, Aurangabad

RESPONDENTS

2. The State of Maharashtra

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Mr. P. S. Paranjape, Advocate for the applicant
Mrs. Vaishali S. Choudhari, Advocate for respondent No.1
Mr. A. P. Basarkar, AGP for respondent State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd SEPTEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. In the proceedings bearing No. A-295 of 2015 filed by applicant in Family Court at Aurangabad for restitution of

conjugal rights, application Exhibit-21 had been filed by respondent No.2 seeking travelling expenses @ Rs.100/- per date and Rs.25,000/-towards Advocate's fees as interim maintenance.

3. The position appears to be that both the parties are earning. The husband is earning about Rs.40,000/- per month and after deductions his take home salary is Rs.32,000/-, whereas the wife gets in aggregate Rs.19,000/- per month. The couple has begotten a child, who is with the respondent-wife.

4. While deciding application Exhibit-21, the learned judge has observed thus -

“8. The respondent has mentioned that, this is an application for interim maintenance. She has mentioned that she should be awarded Rs.100/- towards conveyance allowance and Rs.25,000/- towards Advocate fees. No doubt, the petitioner has filed the present petition and the respondent is required to contest the same. That, therefore, considering the income of both the parties, an amount of Rs.10,000/- towards, Advocate fees is granted to the respondent. The respondent is resident of Aurangabad. She is earning. The present petition has been transferred from Jalna Court to the present court in furtherance of application made by the respondent (wife). That, therefore, her prayer for conveyance allowance is rejected. The earning of respondent is at least Rs.20,000/- and of petitioner at least Rs.33,000/-, considering that the salary

slips on record are not recent. Considering income of both the parties, an amount of Rs.3000/- per month to the respondent and an amount of Rs.2000/- per month to the son granted towards interim maintenance.”

5. As such, the position appears to be that while the demand has been made for travelling expenses per date and advocate's fees and while even granting under paragraph No.8 Rs.10,000/- towards advocate's fees, suddenly, while the matter does not appear to have been addressed accordingly, the learned judge has granted Rs.3000/- to respondent-wife and Rs.2000/- to the child per month towards interim maintenance.

6. In the circumstances, it emerges that there is no demand for maintenance for the respondent-wife nor for the child. Having regard to the position that the respondent-wife is also earning and since there was no demand under application Exhibit-21 for maintenance either for respondent-wife herself or for that matter for the child, it is difficult to sustain the impugned order as far as maintenance to respondent-wife is concerned.

7. In the circumstances, to the extent the impugned order grants interim maintenance to respondent-wife @ Rs.3000/- per month stands set aside. However, it is made clear that as far as the impugned order to the extent it grants interim maintenance

of Rs.2000/- per month to the child, will continue to operate. It is further made clear that this order shall not preclude / impede / forbid other proceedings as would be advised.

8. Miscellaneous Civil Application accordingly stands allowed. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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