

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8043 OF 2015

PRASHANT S/O GOVINDRAO PATIL
VERSUS
SANJEEVANI PRASHANT PATIL

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Advocate for the petitioner: Mr. D.M. Shinde

Advocate for respondent: Mr. G.G. kadam

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CORAM : V. K. JADHAV, J.
DATED : 4th FEBRUARY, 2016

PER COURT:-

1. With consent of learned counsel for both sides, heard finally at admission stage.

2. The petitioner-husband filed petition for dissolution of marriage under Section 13 of Hindu Marriage Act against the respondent-wife. During pendency of said proceeding, the respondent-wife filed an application below Exh.10 for grant of maintenance pendente lite under Section 24 of Hindu Marriage Act, wherein she prayed for maintenance of Rs.25,000/- p.m. Learned Principal Judge of Family Court, Nanded by order dated 26.9.2014 passed below Exh.10 in H.M.P. No. A-226 of 2014 directed the petitioner-husband to pay Rs.15,000/- p.m. as maintenance pendente lite to the respondent wife from the date of application i.e. 19.12.2013 till the decision of petition and shall also pay costs of Rs.20,000/-. Hence, this writ

petition.

3. Learned counsel for the petitioner submits that the petitioner-husband failed to file his say to application Exh.10 and therefore, the trial court has ordered to proceed with application without say. Thereafter, the petitioner has filed an application for setting aside “no say” order by filing say on record. The said application was allowed subject to payment of Rs.200/- which remained unpaid and therefore, application proceeded without say and accordingly, impugned order came to be passed. Learned counsel submits that the petitioner may be granted one opportunity to contest application Exh.10 on merits. Learned counsel submits that without there being any documentary evidence placed on record, the impugned order directing the petitioner-husband to pay maintenance of Rs.15,000/- p.m. is passed.

4. Learned counsel for the respondent-wife submits that the learned Principal Judge, Family Court, Nanded has rightly passed the order. The petitioner husband is serving as a teacher and fetching monthly salary. Furthermore, he is also earning amount by taking private coaching classes. He has also source of income from agricultural landed property and also earning heavy amount from his two educational institutions. He is also getting monthly rent from the

buildings owned and possessed by him. Learned counsel, in the alternate, submits that the petitioner-husband has deposited Rs.1,00,000/- before this Court and respondent-wife may be permitted to withdraw the same. Learned counsel for the petitioner-husband submits that the petitioner-husband has no objection for withdrawal of said amount. However, that should not cause any prejudice to his defence while contesting application Exh.10. It appears from the order that application Exh.10 is decided almost ex-parte since cost of Rs.200/- is remained unpaid. Thus, I am not inclined to enter into the merits of case. The matter can be relegated to the trial court. The petitioner-husband is ready to pay the costs. In view of this, following order is passed:-

O R D E R

- I. Writ petition is partly allowed.
- II. The order dated 26.9.2014 passed below Exh.10 in Petition No. A-226 of 2014 is hereby quashed and set aside.
- III. The petitioner-husband shall deposit cost of Rs.200/- which remained unpaid, within a week from today before the trial court and on depositing the said amount, the say filed by

the petitioner-husband shall be read and recorded. Learned Principal Judge, Family Court, Nanded then shall hear the parties and to decide application Exh.10 afresh.

- IV. The respondent-wife is permitted to withdraw an amount of Rs.1,00,000/- (Rupees One lac only) deposited by the petitioner-husband in this Court and the same shall not cause any prejudice to the defence of the petitioner-husband in contesting application Exh.10.
- V. All points are kept open.
- VI. Writ petition is disposed of in the above terms. No costs.
- VII. In view of the disposal of main writ petition, nothing remains to be decided in civil application No. 13650 of 2015 and the same is accordingly disposed of.

(V. K. JADHAV, J.)