

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12007 OF 2015

Jyoti w/o Pravin Edake,
age: 27 years, occu: service,
R/o at present C/o Ashok
Muktaji Borude, Pandharipul
(Borude Vasti), Nagar Aurangabad Road,
Tq. Newasa, Dist. Ahmednagar

Petitioner

Versus

Pravin s/o Gopichand Edake
age: 33 years, occu: service,
R/o Sonai, Tq. Newasa,
Dist. Ahmednagar

Respondents

Mr.N.C.Garud advocate for the petitioner
Mr. C.K.Shinde advocate for respondent

CORAM : **R.M. BORDE, J**

(Date : 25th APRIL, 2016.)

ORAL JUDGMENT

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision, at admission stage.

3 An application tendered by the petitioner claiming interim maintenance @ Rs.5,000/- p.m. each for herself and for two daughters under section 24 of the Hindu Marriage Act together with litigation expenses of Rs.25,000/- has been turned down by the Trial Court by order dated 15.4.2015. The reason for rejection

of the application tendered by the petitioner is that she is serving as a teacher in the school and is earning salary of Rs.25,000/-. Respondent is also a teacher in a school and earns Rs.30,000/- p.m. as salary.

4 Counsel appearing for the petitioner informs that, there are two minor daughters residing with the applicant and she has to bear the expenses for their maintenance also. Even if the wife is earning for herself, that itself cannot be a ground for rejection of application for interim maintenance under section 24 for the two daughters. The factum of respondent being employed and earning Rs.30,000/- is not denied, nor the factum of employment of the petitioner and earning income by her to the tune of Rs.25,000/- is denied.

5 Counsel appearing for the respondent contends that, it would be impermissible for the Court to grant interim maintenance under section 24 for the children and proper remedy is to claim maintenance under section 125 of Criminal Procedure Code and under the provisions of Hindu Adoption & Maintenance Act. Reliance is placed on the Judgment in case of ***Akella Rama Murthy S/o A. Thimmaya Shastry V/s Akella Sitalaxmi w/o A. Rama Murthy*** reported in AIR 2005 ANDHRA PRADESH

497 delivered by the single Judge. Similarly reliance is also placed on the Judgment delivered by the single Judge of Patna High Court in the matter of ***Bankim Chandra Roy v/s Smt. Anjali Roy*** reported in AIR 1972 Pat 80.

6 Counsel appearing for the petitioner places reliance on the Judgment in the matter of ***Amit Rasiklal Shah v/s Sonal Amit Shah*** reported in 2011 (1) Mh. L.J. 533 delivered by learned single Judge of this Court and Judgment delivered by the single Judge of Gujrat High Court in the matter of ***Remani Menon & another versus K.G. Omnakuttan and another*** reported in AIR 2004 GUJRAT 23.

Placing reliance on the aforesaid two Judgments, it has been pointed out that this Court as well as the Gujrat High Court have directed the payment of maintenance to the children commensurate with the status of the family.

7 It must be borne in mind that, since the petitioner is maintaining her two minor children, she has to divert major part of income for maintenance of children and as such, she requires financial assistance for prosecuting the litigation initiated against her.

8 Considering the matter from the aforesaid perspective, the argument advanced by the learned counsel appearing for the respondent does not appear to be sound.

9 In view of these facts and circumstances, I deem it proper to direct the respondent to pay maintenance @ Rs.2,500/- p.m. for each daughter i.e. total Rs.5,000/- p.m. from the date of the application until disposal of the Hindu Marriage Petition. The arrears shall be paid within a period of three months from today. Apart from the amount of maintenance, the respondent shall pay litigation expenses to the tune of Rs.10,000/- within the period specified as above.

10 Rule is accordingly made absolute.

11 There shall be no order as to costs.

12 The Trial Court shall decide the H.M.P. No.72/2014 as expeditiously as possible and preferably within a period of six months from today.

(R.M.BORDE, J)