

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11665 OF 2015

Dattatraya S/o Mohan Atole,
Age : 31 years, Occu : Service,
R/o : Chincholi Ramjan,
Taluka Karjat,
District Ahmednagar.

... Petitioner

Versus

Sau. Ashvini W/o Dattatraya Atole,
Age : 28 years, Occu : Labourer,
R/o : C/o Bhausahab Trimak Mind,
Kaudgaon, Taluka Nagar,
District Ahmednagar.

... Respondent

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Advocate for the petitioner : Mr. A. S. Radikar
Advocate for respondent (sole) : Mr. A. M. Gholap
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CORAM : V. K. JADHAV, J.

DATED : 01st MARCH, 2016

ORAL JUDGMENT :-

1. Rule. Rule returnable forthwith. By consent of the parties, heard finally.

2. By way of this petition, the petitioner is challenging the order dated 23.10.2015 passed by learned 5th Joint Civil Judge Senior Division, Ahmednagar below Exh.5 in Hindu Marriage petition No.478 of 2014.

3. Brief facts giving rise to the present petition are as under:

The respondent-wife has filed Hindu Marriage Petition No. 478 of 2014 before learned Civil Judge, Senior Division, Ahmednagar under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. In the said Hindu Marriage Petition, respondent-wife also filed an application Exh.5 under Section 24 of the Hindu Marriage Act for interim maintenance. She had claimed Rs.10,000/- per month from petitioner-husband towards interim maintenance and Rs.5,000/- as the cost of the petition. Learned 5th Joint Civil Judge Senior Division, Ahmednagar, by impugned order dated 23.10.2015, has granted interim maintenance at the rate of Rs.7,000/- per month from the date of application. Hence this writ petition.

4. Learned counsel for the petitioner submits that as per the salary extract, petitioner-husband is only getting net salary of Rs.2,655/-. Learned counsel submits that even though the gross salary of petitioner is more than Rs.15,000/- per month, there are certain deductions on various counts and on account of the society loan, there is monthly deduction of more than Rs.10,000/-. Learned counsel submits that the petitioner has obtained loan from the said society for treatment of his son, who subsequently died due to some disease. Learned counsel for the petitioner-husband submits that the petitioner possesses only 40R of land and in the drought

situation, it is not possible for the petitioner to cultivate the same and fetch any income from that land. Learned counsel submits that learned Judge of the trial court has not considered the same and granted excessive interim maintenance to the respondent-wife. Learned counsel submits that, pursuant to the order passed by this Court on 05.12.2015, the petitioner-husband has deposited Rs.25,000/- before this Court.

5. Learned counsel for respondent-wife submits that respondent-wife has filed Hindu Marriage Petition for restitution of conjugal rights. However, prior to that, petitioner has filed Hindu Marriage Petition No. 81 of 2014 for dissolution of marriage by decree of divorce. Learned counsel submits that respondent-wife has to incur expenses in both the proceedings to defend her case. Learned counsel submits that respondent-wife has not filed any application for interim maintenance in the petition filed by petitioner-husband for dissolution of marriage. Learned counsel further submits that besides the salaried income, petitioner-husband is also fetching income from his agricultural land. Even there is a land ad-measuring 2H 39R standing in the name of petitioner's father and the petitioner-husband is fetching income from that land also.

6. It appears from the salary extract that there is monthly

deduction of more than Rs.10,000/- towards the loan obtained from the society. Even though petitioner is getting a gross salary of Rs. 15,801/-, because of the said deduction and also other deductions under various heads, he is getting net salary of Rs.2,655/- per month. Apart from this, there is no evidence to show as to how much income the petitioner is fetching from his agricultural lands. However, petitioner must have been fetching income from the land owned and possessed by him and from the land standing in the name of his father. Hence, considering the evidence placed on record and the submissions made on behalf of the parties by their respective counsel, I am of the opinion that the interim maintenance at the rate of Rs.3,500/- per month meet the ends of justice. The impugned order thus, requires to be modified to that extent. Hence the following order:

O R D E R

- I. The writ petition is hereby partly allowed.
- II. The order dated 23.10.2015 passed by the 5th Joint Civil Judge Senior Division, Ahmednagar below Exh.5 in H.M.P. No. 478 of 2014 is modified to the extent that the petitioner-husband is hereby directed to pay Rs.3,500/- (Rupees Three Thousand Five Hundred only) as interim maintenance. Rest of the order stands confirmed.

- III. Respondent-wife is permitted to withdraw the amount of Rs.25,000/- deposited by the petitioner pursuant to the orders passed by this Court. The amount so withdrawn by respondent-wife shall be considered while calculating the outstanding and due amount of arrears of the interim maintenance.
- IV. Rule is made absolute in the above terms. Writ Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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vre/-