

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 563 OF 2015**

Mr. Andrew Rego, s/o late Antonio Francisco de Rego, aged 44 years, service, r/o H. No. 486, St. Francis Vaddo, Goa Velha, Tiswadi, Goa.

Represented by his duly Constituted Power of Attorney, Mr. Felipe Jose Noronha, s/o late Mateus Caitano Noronha, aged 62 years, r/o H. No. 943/2, Bazar, Shiroda, Ponda, Goa.

.... Petitioner

Versus

Mrs. Juliet Lopes, d/o Mr. Francisco Xavier Lopes, aged 35 years, service, r/o Malwara, Agassaim, P.O. St. Lawrence, Goa.

.... Respondent

Mr. Cliff Fernandes, Advocate for the Petitioner.

Mr. J. Coelho Pereira, Senior Advocate with Ms. D. Lotlikar, Advocate for the the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 11th FEBRUARY, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent.

2. This Writ Petition challenges the common judgment

and order dated 29.04.2015 passed in Miscellaneous Civil Appeal No. 92/2012 and Miscellaneous Civil Appeal No. 62/2013, preferred by the petitioner and the respondent respectively, against the order dated 29.08.2012 passed in Matrimonial Petition No. 63/2011/A by the Court of Civil Judge Senior Division, Panaji.

While Miscellaneous Civil Appeal No. 62/2013 has been dismissed, Miscellaneous Civil Appeal No. 92/2012 has been partly allowed by the learned District Judge. The effect is that the challenge of the petitioner-husband to the order directing him to grant interim monthly maintenance to the respondent-wife has been rejected and plea of respondent-wife to enhance the interim monthly maintenance from Rs.3,000/- to some reasonable amount has been partly allowed. Consequently, by the order impugned herein, the petitioner-husband has been directed to pay an amount of Rs.8,000/- per month as a maintenance pendente lite.

3. According to learned Counsel for the petitioner, principles governing grant of interim maintenance as per the provisions of Section 24 of the Hindu Marriage Act would not be applicable to the proceedings initiated under the Family Laws of

the State of Goa. He submits that a divorce petition under Article 4 of Chapter II of Law of Divorce under the Family Laws has been filed by the petitioner-husband against the respondent-wife on the grounds of ill treatment, complete abandonment and adulterous life of the respondent-wife. He submits that the respondent-wife has also filed a counter petition seeking divorce on the ground of impotency of the husband. He further submits that in such proceedings, provisions of Article 32 would come into play, according to which, the right to maintain and liability to provide maintenance would cease, when the spouse has been shown to be remarried or to have become unworthy of receiving such a benefit owing to her immoral conduct. He points out from the copies of the documents placed on record that the immoral conduct of respondent-wife has been *prima facie* proved and yet, the learned District Judge did not consider the same. He submits that the impugned order, therefore, is arbitrary and deserves to be set aside.

4. Learned Senior Counsel has strongly opposed the petition. He submits that the principles governing grant of interim maintenance are common to both systems of law

governed by the Hindu Code Bill and Family Laws applicable to the State of Goa. He points out that under Article 20, provisional maintenance can be sought and can be granted. He further submits that although this Article does not delineate the power of the Court to grant interim maintenance, the principles governing grant of maintenance under the Hindu Marriage Act would have to be followed as they are founded on good conscience, morality and public policy and, therefore, invocation of these principles by the learned District Judge cannot be faulted with. He submits that while exercising power under Article 227 of the Constitution of India, what is required to be examined by the Court is whether or not, the order challenged is perverse or arbitrary or has been passed in breach of settled principles of law. He submits that none of these criteria is satisfied by the impugned order and, therefore, there is no warrant for making any interference with it.

5. On going through the impugned order, I find that the learned District Judge, in the facts of the instant case, has applied the principles of law governing grant of interim maintenance under Section 24 of the Hindu Marriage Act to the proceedings initiated under the Family Laws of Goa. As rightly

submitted by learned Senior Counsel for the respondent, even though, there are no guidelines expressly laid down under Articles 20, 29 or 30 for exercising discretion to grant interim maintenance, the per-requisites for grant of interim maintenance under Section 24 of the Hindu Marriage Act, can be invoked and pressed into service for exercising a similar discretion. After all, these per-requisites have their origin in the principles of good conscious, morality and public policy and there is no reason why they be not applied to discretionary power to grant provisional maintenance under the Family Laws applicable to the State of Goa, which power also springs up from the same principle. Therefore, what has to be seen is as to whether or not, the order challenged by invoking extra-ordinary writ jurisdiction under Article 227 of the Constitution of India has been passed in ignorance of settled principles of law or has resulted in miscarriage of justice.

6. On the touch stone of the principles discussed earlier, I find that the impugned order to the extent it declares entitlement of the respondent-wife to receive interim maintenance, cannot be found to be passed in breach of settled principles of law. Learned District Judge has rightly found, by

relying upon the case of **Mrs. Bijal Parag Dave Vs. Parag Labhashankar Dave, AIR 1999 BOM 237** that the only consideration before the Court exercising its power for grant of interim maintenance is the inability of the spouse to maintain herself or lack of financial means to maintain at a level of same social status as of the other spouse. The object being to prevent the spouse from being driven into the state of despondency and helplessness and to enable the spouse to present her case effectively. But, as regards the quantum of maintenance, I am of the view that some modification to the impugned order would be required in the interest of justice and this is for the reason that there are some admitted facts in respect of the income of the petitioner, which need appropriate consideration.

7. In this view of the matter, the Writ Petition deserves to be dismissed, but, with a rider that there shall be a modification to the impugned order directing payment of interim monthly maintenance to the respondent-wife and it would be in terms that, now, the petitioner-husband shall deposit the amount of interim monthly maintenance in the Court on or before fifth day of every subsequent month as directed by the

impugned order and upon such deposit, the respondent-wife shall be entitled to withdraw the amount of Rs.6,000/- every month and the rest of the amount shall be kept in deposit with the Court, and shall be subject to the result of the divorce petition pending before the trial Court.

8. Writ Petition is accordingly dismissed, subject to the above stated modification. All proceedings pending before the trial Court are expedited and the trial Court shall endeavour to dispose of the same as expeditiously as possible and preferably within a period of one year from the date of the order.

9. At this stage, learned Counsel for the petitioner submits that the petitioner's right to claim refund of Rs.6,000/- towards interim monthly maintenance should be reserved, which he says is necessary just in case the petitioner succeeds in proving his case. Learned Senior Counsel submits that even otherwise, the petitioner is entitled to resort to such remedy for redressal of his grievance as permissible under the law.

10. Having regard to the afore-stated rival submissions, the question of claiming of refund of Rs.6,000/-, as and when

the need arises, is kept open and the same shall be determined in accordance with law.

11. Rule is discharged with modification as stated above.

No costs.

S. B. SHUKRE, J.

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