

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9664 OF 2014

Sunil Subhash Rathod

.. Petitioner

Versus

Mrs. Nikita Sunil Rathod

.. Respondent

Ms. Seema Sarnaik a/w Shri. Ameya Tamhane, for the Petitioner.

Shri. R. S. Alange, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 28th MARCH 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 12.09.2014 passed by the Learned Principal Judge, Family Court, Solapur, by which order, the application Exh.33 filed by the Respondent for interim maintenance came to be partly allowed and the Petitioner herein i.e. the Opponent to the said proceedings was directed to pay Rs.10,000/- to the Applicant towards interim maintenance from the date of the filing of the application till the order of the said Court.

2. The said application Exh.33 was filed in the pending proceedings being P A. No.1193 of 2011 filed by the Petitioner for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The said

application was filed on 19.11.2012. However, the proceedings in the main Petition had commenced sometime in December 2011. The Respondent herein had appeared in the said proceedings on 05.01.2012. It is the case of the Respondent that she has no source of income and therefore to sustain herself that she has sought maintenance from the Petitioner herein. It is the case of the Respondent that the Petitioner herein is working as an Engineer with the Pune Municipal Corporation and his gross emoluments are in the region of more than Rs.50,000/- per month at the time of the filing of the application. The said application was sought to be opposed on the ground that it is the Respondent i.e. the Applicant who has delayed the adjudication of the said application for interim maintenance. The ground of delay is sought to be buttressed by contending that the Respondent has filed an application in this Court for transfer of the proceedings from the Family Court, Pune to the Family Court, Solapur, which came to be allowed by a Learned Single Judge of this Court by order dated 12.03.2013. The said application Exh.33 was considered by the Family Court, Solapur, which by the impugned order has partly allowed the same to the extent that the interim maintenance of Rs.10,000/- has been granted to the Respondent herein. The contention urged on behalf of the Petitioner that the Respondent cannot be granted maintenance from the date of the filing of the application was not

countenanced by the Family Court as it was of the view that the Respondent was having no financial wherewithal to maintain herself and it was the obligation of the Petitioner herein to maintain the Respondent till the proceedings are decided one way or the other. Before the Family Court the salary slip of the Petitioner was produced. The said salary slip discloses that on the date of deciding the application the gross emoluments of the Petitioner were in the region of Rs.42,125/- (in March 2014) out of which Rs.4,940/- was deducted and therefore take home salary of the Petitioner was in the region of about Rs.37,185/-. The Family Court therefore deemed it appropriate to grant interim maintenance of Rs.10,000/- to the Respondent. As indicated above, it is the said order dated 12.09.2014 which is sought to be taken exception to by way of the above Petition.

3. It was the submission of the Learned Counsel Ms. Seema Sarnaik for the Petitioner that the factum of the Petitioner paying an amount of Rs.12,000/- to Rs.15,000/- for his residential accommodation has not been taken into consideration by the Family Court. The Respondent being responsible for the delay in deciding the said application is sought to be re-urged by the Learned Counsel for the Petitioner and on the said basis it is sought to be contended that the Respondent is not entitled to the grant of maintenance from the date of

filing of the application i.e. 19.11.2012. It was also the contention of the Learned Counsel for the Petitioner that the amount of Rs.10,000/- granted as interim maintenance was excessive having regard to the amounts which the Petitioner has to pay for residential accommodation and for the car loan.

4. Per contra, on behalf of the Respondent the Learned Counsel Shri. R. S. Alange submitted that the case of the Petitioner that he has to pay for his residential accommodation to the tune of Rs.12,000/- to Rs.15,000/- cannot be accepted. It was the submission of Shri. R. S. Alange that the Leave and Licence agreements which are annexed to this proceedings were not part of the record before the Family Court whilst it was considering the application for interim maintenance. It was sought to be contended on behalf of the Respondent that a false bogey of the Petitioner having to pay for his residential accommodation is sought to be raised when in fact the Petitioner is staying in an accommodation which he owns which fact is ex-facie clear from the documents annexed to the Petition itself. It was also the submission of the Learned Counsel that even though Respondent might have not appeared, but her Advocate was very much present and therefore, the Trial Court i.e. Family Court was right in not countenancing the factum of delay, which was a contention sought to be urged on behalf of the Petitioner.

5. Having heard the Learned Counsel for the parties. The question posed is whether the amount of Rs.10,000/- fixed as interim maintenance from the date of filing application can be justified. It is required to be noted that the Respondent is not gainfully employed and in fact is suffering from arthritis. In her application for interim maintenance she has stated the said fact and also stated that she requires the amount which she is seeking by way of interim maintenance to sustain herself. It is her case that the Petitioner is working as an Engineer with the Pune Municipal Corporation. The fact that the Petitioner is working with the Pune Municipal Corporation cannot be disputed in the light of the salary slip of the Petitioner which is on record of the Family Court. In so far as the delay, which according to the Petitioner has occurred on account of the Respondent not remaining present before the Family Court whilst proceedings were pending in Pune is concerned, in my view, the said contention cannot be accepted, as though the Respondent was not present on a few dates, her Advocate was very much present. It is required to be borne in mind that on account of her ailment the Respondent might not have been in a position to attend the Court on each and every date. In the instant case, the application was filed on 19.11.2012 and has been decided on 12.09.2014. The said application was decided after the matter was transferred to the Family Court, Solapur, though the application was

filed in the Family Court at Pune. In my view, therefore, the Family Court, Solapur, has rightly come to the conclusion that the contention urged on behalf of the Petitioner that the Respondent is not entitled to interim maintenance from the date of the application cannot be accepted.

6. In so far as the ground that the Petitioner has to pay for his residential accommodation is concerned, in support of which reliance is sought to be placed on the two Leave and Licence agreements executed by the Petitioner in respect of the premises mentioned therein. In my view, the said contention cannot be accepted. It is required to be noted that notwithstanding the alleged execution of the said Leave and Licence agreements between the Petitioner and owners of the flats in question, the Petitioner's address has consistently remained the same right from the year 2011, which is mentioned in the cause title of the above Petition. The address has remained the same prior to the Leave and Licence agreements being executed and even after the Leave and Licence agreements were executed. This fact belies the case of the Petitioner that he is residing in a rented accommodation and supports the case of the Respondent that the Petitioner has his own premises and owns them. Significantly, the two Leave and Licence agreements on which much store is sought to be laid by the Petitioner in this Court were not before the Family Court at Solapur, whilst it was adjudicating the application for interim maintenance. In my

view, therefore, no credence could be given to the said case of the Petitioner. In so far as the quantum is concerned, in my view, having regard to the fact that the total take home salary of the Petitioner who is working as an Engineer with the Pune Municipal Corporation are Rs.37,185/-, the interim maintenance fixed at Rs.10,000/- cannot be said to be excessive or exorbitant having regard to the income of the Petitioner as also having regard to the cost of living in the present times. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]