

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1736 OF 2013

Mrs. Smita @ Sampada Parag Kulkarni	]
Age:40, Occ: Housewife,	]
R/o: Rashalekha Society, A/3/20,	]
Gajendra Nagar, Dattawadi, Pune 30	].. Petitioner

Versus

Mr. Parag @ Shreenivas Narayan Kulkarni	]
Age:43, Occu: Business,	]
R/o: Sanika Bhavan, C.S. No.1022/A,	]
Sangli	].. Respondent

Ms. Chaitrali Deshmukh, for the Petitioner.

Mr. S. A. Ghaisas, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 22nd APRIL 2016

ORAL JUDGMENT

1. The above Petition had come up for admission before a Learned Single Judge of this Court (M. S. Sonak, J.) on 03.09.2015 when the Learned Judge observed that the above Petition is required to be disposed of finally at the stage of admission. This is how, the Petition is taken up for final hearing.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The writ jurisdiction of this Court is invoked against the order dated 06.07.2012 passed by the Learned Civil Judge, Senior Division, Sangli, by which order, the application Exh.18 filed by the Petitioner came to be partly allowed and the Respondent was directed to pay interim maintenance of Rs.8000/- from the date of the application i.e. from 19.04.2011 for the Petitioner and her son Sharman till final decision of the Petition. The marriage between the Petitioner and the Respondent was solemnized on 23.11.2005. Out of the said wedlock, a son named Sharman was born on 06.01.2007. The Petitioner and the Respondent are estranged and the Respondent herein has filed Marriage Petition No.105 of 2010 seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 in the Court of Learned Civil Judge Senior Division, Sangli. The Petitioner herein had filed her written statement and counterclaim and is contesting the said Marriage Petition. It is pending the said Marriage Petition that the Petitioner has filed the instant application for interim maintenance. The claim of the Petitioner as interim maintenance was at the rate of Rs.25,000/- for herself and Rs.25,000/- for her son Sharman. The said application is numbered as Exh.18. The claim in the said application is founded on the fact that the Respondent herein is the owner

of a jewellery shop known as Kulkarni and Belwalkar Jewellers. He has ancestral properties in the city of Sangli as also he owns three flats and his income is in the minimum in the sum of Rs.1,00,000/- per month. In so far as the Petitioner is concerned, she has stated that she has completed her B.Com. and completed commercial art course. It was her case that though she was employed prior to her marriage, she left the job after getting married and that she is currently unemployed. The Trial Court i.e. Learned Civil Judge, Senior Division, Sangli, considered the application and having regard to the facts which have come on record namely that the Respondent is a building contractor and also doing business under the name and style of Kulkarni and Belwalkar Jewellers and his monthly income is about Rs.1,00,000/-, fixed the interim maintenance at Rs.8000/- per month both for the Petitioner and her son Sharman till the final decision of the Marriage Petition. As indicated above, it is the said order dated 06.07.2012 passed by the Trial Court i.e. Learned Civil Judge, Senior Division, Sangli, which is taken exception to by way of the above Petition.

4. On behalf of the parties, the Learned Counsel Ms. Chaitrali Deshmukh for the Petitioner and Mr. S. A. Ghaisas for the Respondent would urge contentions for and against the enhancement being granted of the said interim maintenance. Whilst it was the submission of Ms.

Chaitrali Deshmukh that Respondent is a person of means in as much as he is businessman and also doing business under the name and style of Kulkarni and Belwalkar Jewellers. It was the submission of Mr. S. A. Ghaisas that the Petitioner is qualified and is earning Rs.10,000/- per month as a Computer Designer. It was the submission of Mr. S. A. Ghaisas that no enhancement is therefore required to be granted in respect of the maintenance that is fixed by the Trial Court by the impugned order.

5. Having heard the Learned Counsel for the parties and having perused the impugned order, in my view, the maintenance granted by the Trial Court at Rs.8000/- per month is required to be enhanced and also maintenance is required to be granted to the son Sharman. In the said context, it is required to be noted that the above Petition had come up for admission before a Learned Single Judge of this Court (M. S. Sonak, J.) on 03.09.2015. The Learned Judge having regard to the facts which had come on record by an order passed on the said day had directed the Respondent to pay interim compensation at Rs.20,000/- per month pending the above Petition. The Respondent has accordingly made the said payments in terms of the said direction. However, the Learned Counsel for the Petitioner Ms. Chaitrali Deshmukh states that there is outstanding amount of Rs.2,28,000/-. Be that as it may, the question that is posed, is whether enhancement is required to be granted of the interim

maintenance fixed by the Trial Court. As indicated above, a Learned Single Judge of this Court has deemed it appropriate to direct the Respondent to pay interim maintenance at the rate of Rs.20,000/- per month, the said amount if considered in the context of the fact that the Respondent is a jeweller and doing business in the name and style of Kulkarni and Belwalkar Jewellers as also having regard to the fact that he is also a contractor who is in the real estate business, in my view, it is not necessary to modify the ad-interim order which was passed by a Learned Single Judge directing interim maintenance at Rs.20,000/- per month. However, it is required to be noted that the son of the Petitioner is now nine years old and he is presently studying in the third standard in Versatile Primary School in Pune. Hence, his needs also have to be taken care of. In my view, considering the present cost of living as also considering the fact that the Petitioner and her son would be entitled to the same lifestyle and comfort as being enjoyed by the Respondent. The son Sharman would be entitled to interim maintenance. The same is therefore fixed at Rs.10,000/- per month for him which entitlement would be from April 2016. Hence, the following directions are issued :-

- I) The Petitioner No.1 would be entitled to interim maintenance at Rs.20,000/- per month and the Petitioner No.2 i.e. son would be entitled to maintenance at

Rs.10,000/- per month. In so far as the Petitioner No.2 is concerned, his entitlement would be from April 2016.

II) The Respondent would continue to pay the Petitioner No.1 at Rs.20,000/- per month as directed by the interim order dated 03.09.2015. However, in addition now he would have to make a further payment of Rs.10,000/- on account of the son Sharman.

III) The aforesaid arrangement would operate pending the consideration of the Marriage Petition and no further enhancement would be sought for a period of two years in the event the said Marriage Petition is not disposed of within the said time.

IV) The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms, with parties to bear their respective costs.

[R.M. SAVANT, J]