

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2131 OF 2015

Rishikesh G. Vyas

.. Petitioner

vs.

Monali R. Vyas

.. Respondent

Mr. Ashutosh R. Gole for the Petitioner.

Ms J.V. Shah for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 18 JANUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 5 November 2014, by which, the Family Court, Mumbai has directed to pay interim maintenance of Rs.20,000/- to the Respondent from the date of her application till disposal of main petition.

2] Mr. Gole, learned counsel for the Petitioner, has submitted that so called findings recorded in the impugned order are result of '*guess work*'. He submitted that in the main petition, the Petitioner-wife had earlier prayed for relief that the Respondent-husband be directed to disclose the details with regard to his income. However, such relief was deleted by the Petitioner-wife. In the wake of such deletion, the Family Court was not entitled to draw an adverse inference against the Petitioner herein for not disclosing details with regard to his

income. Mr. Gole has submitted that the Petitioner has now produced certain documents on record, which establish that the Petitioner is no longer in service and the income from his private practice as a company secretary, is by no means sufficient to award maintenance of Rs.20,000/- to the Respondent-wife. Mr. Gole submitted that the Respondent herself is a qualified person, who was earlier employed with HDFC Standard Life Insurance Company and drawing salary of Rs.60,000/- per month. He has submitted that there are no reasons as to what prompted the Respondent from quitting her job. Mr. Gole submits that the entire objective of quitting the job is to extort maintenance from the Petitioner. Reliance was placed by Mr. Gole upon the decision of Madhya Pradesh High Court in case of *Mamta Jaiswal Vs. Rajesh Jaiswal – 2000 (4) MPHT 457*, in the context of award of maintenance to a spouse, who is competent to earn, but chooses to remain idle.

3] Having heard the learned counsel for the parties and perused the material on record, in my judgment, no case is made out to interfere with the impugned order. At the outset, by the impugned order, only interim maintenance has been awarded to the Respondent-wife. The criticism of Mr. Gole that the Family Court had

indulged into '*guess work*' is not justified. Admittedly, the Petitioner is a qualified professional, i.e., company secretary, who is presently doing private practice under the name and style of Rishikesh Vyas & Associates. Prior to this, the Petitioner was employed with concerns like MAN Industries and Mahindra and Mahindra. In these circumstances, it was the duty of the Petitioner to have been candid with the Court and disclose details with regard to his income. The Family Court in paragraph '10' has pointed out that the Petitioner chooses to file a reply of 20 pages, but made no mention or reference to the precise nature or details with regard to his income. In these circumstances, the Family Court had no option but to make some reasonable estimate and award interim maintenance. Even the documents, which the Petitioner has now chosen to append to the petition, were not filed by the Petitioner before the Family Court.

4] The Respondent, in her application, has stated that she had to quit her earlier job, on account of trauma arising out of disputes and differences with the Petitioner. At this stage, it is not necessary to either accept or reject such explanation, particularly, since what has been awarded is only interim maintenance. The Petitioner will obviously have ample opportunity of placing adequate material on

record, including by way of cross-examination of the Respondent, on the aspect of reasons which prompted the Respondent to quit her job or reasons as to why she is allegedly idle, despite she is having the capacity to earn. Similarly, the Respondent will also have adequate opportunity to place on record the material, including by way of cross-examination, in case the Petitioner chooses to examine himself as to the circumstances in which he quit his job with companies like MAn Industries and Mahindra and Mahindra and chooses to start private practice, from which he claims to be earning hardly any income. All these are matters which will have to be considered by the Family Court, at the stage of final disposal of the petition.

5] There is no jurisdictional error in making of impugned order. The impugned order is not vitiated by any perversity. The decision in case of *Mamta Jaiswal (supra)*, turns its own facts. Besides, the Madhya Pradesh High Court was not dealing with the case of interim maintenance in a situation where the husband, despite being a qualified professional as company secretary, has chosen not to disclose whatsoever with regard to his income. The decision of Madhya Pradesh High Court will therefore, be of no assistance to the Petitioner, at least at this stage.

6] For all the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

7] The amount of Rs.1,80,000/-, which is deposited by the Petitioner in this Court may be withdrawn by the Respondent. The Registry is, accordingly, directed to permit the Respondent to withdraw the said amount unconditionally.

8] It is, however, made clear that the Family Court whilst disposing of the main petition, shall do so in accordance with law and on its own merits without being influenced by any observations made either in the impugned order or in this order.

(M. S. SONAK, J.)

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