

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

WRIT PETITION NO. 3102 OF 2015

Mr. Sanjay Bhairavnath Kirdat ... Petitioner

Vs

Mrs. Sangita Sanjay Kirdat ... Respondent

...

Mr. Karan Bhosale for the Petitioner.

CORAM : M. S. SONAK, J.

DATE :20 JANUARY, 2016

P.C. :

1. The challenge in this petition is to the order dated 16.12.2014 made by Civil Judge Senior Division, Satara awarding to the petitioner's wife and his minor daughter maintenance of Rs. 2000/- and Rs. 3000/- respectively per month, during the pendency of the suit instituted by the petitioner, seeking divorce. Mr. Bhosale the learned counsel for the petitioner has submitted that the petitioner, in his reply to the application seeking interim maintenance had pointed out that the respondent wife is in service and earning salary of Rs. 10,000/- per month. In the reply it is also pointed out that the petitioner has limited income from out of coaching classes. Mr. Bhosale submitted that rentals from 18 rooms are not received by the petitioner but by his father. However, the properties are mortgaged. Mr. Bhosale, on the basis of certain documents which

were not a part of the record before the trial Court when the impugned order was made, submitted that such documents are required to be taken into consideration, particularly in the matter of determination of payment of capacity of the petitioner. For all these reasons he submitted that the award of interim maintenance by the trial Court, without considering the earning capacity of the respondent wife, is required to be interfered with.

2. Having heard the learned counsel for the petitioner, perused the record as also the impugned order, in my judgment, there is no case made out to interfere with the same. In the first place a document upon which the petitioner seeks to place reliance were not produced before the trial Court. If the reply of the petitioner is perused, the petitioner therein grudges of his wife taking up a job by commenting that the respondent-wife is not interested in looking after the minor daughter and therefore, has stubbornly chosen to taken up a job. Such an averment is quite unfortunate. On one hand the petitioner seeks to avoid payment of maintenance to his wife and minor daughter and on the other hand, the petitioner grudges efforts on the part of his wife to take up a job so as to provide maintenance to herself and the minor daughter. All this apart, there is no material produced on record to establish that the respondent wife is need serving and earning Rs. 10,000/- per month. There was no

question of reliance upon a bare statement on this count at least at the interim stage. The earning capacity of the petitioner has been taken into consideration by the trial Court at the stage of making the impugned order. This petition is therefore liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

3. In case, the Petitioner has not complied with the directions for payment of interim maintenance, he may do so, by clearing the arrears within a period of 4 weeks from today.

4. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)