

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO.10967 OF 2015

Nakul S/o Anantrao Deshmukh petitioner

versus

Padmini W/o Nakul Deshmukh ... respondent

None for the petitioner.
None for the respondent.

CORAM : M.S. SONAK, J.
DATE : 26th AUGUST, 2016

P.C. :

1. Neither the petitioner nor his advocate is present.
2. On 22/01/2016, this Court issued Rule and declined interim relief to the petitioner.
3. The challenge in this petition is to the order dated 27/01/2015, by which the petitioner has been directed to pay interim maintenance at the rate of Rs.20,000/- per month to the respondent and Rs.10,000/- per month each to the minor children from the date of application till the date of final decision of the

petition. Besides, costs of Rs.25,000/- has also been awarded to the respondent herein.

4. If the impugned order as well as the record is perused, it is clear that the respondent had, in fact, applied for interim maintenance of Rs.1 lakh per month and costs of Rs.50,000/- for herself. Ultimately, what has been granted by way of interim maintenance is Rs.40,000/- in all.

5. The material on record establishes that family of the petitioner owns the following immovable properties:

- “ (1) *House at Risod*
- (2) *3 BHK House at Akola*
- (3) *2 BHK farm house at Jawala*
- (4) *Farm House at Chikhaldara*
- (5) *3 BHK flat at Worli, Mumbai*
- (6) *3 BHK flat in the petitioner's name at Mulund, Mumbai*
- (7) *3 BHK flat at Pune*
- (8) *3 BHK flat at Nagpur*
- (9) *Farms at E Sai and Bhar”*

6. There is also further material on record which indicates at least prima facie that the family of the petitioner owns following institutions.

- “ (1) A working women's hostel at Akola and earns around Rs. One Lac per month from the same,
(2) Krishwad Bank at Chinchamba,
(3) Agricultural College at Karda,
(4) Sun Rise English Medium School at Risod,
(5) Boys School at Risod,
(6) Girls School at Risod,
(7) Primary School at Risod,
(8) Science College at Risod,
(9) School at Chinchamaba.”

7. There is no dispute that the petitioner is himself a qualified legal practitioner, though he claims to have quit practice for reasons attributed to the respondent. It is the case of the petitioner that he presently resides at a resort, where he undertakes agricultural operations.

8. In the aforesaid circumstances, at least at the stage of determination of interim maintenance, it is difficult to accept the petitioner's contention that the petitioner has no nexus with the immovable properties and institutions hereinabove and that the petitioner is not in receipt of any income whatsoever from these sources. The petitioner has merely stated that he has quit legal practice and he undertakes agricultural operations. Considering

the material on record, an inference can be legitimately drawn that the petitioner has substantial income from agricultural operations, which he undertakes at Risod.

9. The contentions of the petitioner that the respondent wife has deserted him without any reasonable cause and therefore, she is disentitled to maintenance, cannot be considered in great details at the stage of determination of interim maintenance. However, there is no basis to accept the petitioner's contention that there are admissions in the pleadings of the respondent on the aspect of matter of justification to stay away from the petitioner. On the basis of material on record, at least prima facie, it cannot be stated that the respondent, without any justification whatsoever, has deserted the petitioner and consequently, is disentitled to any maintenance.

10. In the case of *Bhuwan Mohan Singh v/s. Meena and Others*, (2015) 6 S.C.C. 353, the Hon'ble Supreme Court, in the context of the provisions contained in section 125 of Cr.P.C., in paragraph No.2 has observed thus:

2. *“Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”*

11. Similarly, in the case of ***Shamima Farooqui, v/s. Shahid Khan, (2015) 5 S.C.C. 705***, the Hon'ble Supreme Court has held that the obligation of the husband is on a higher pedestal when the question of maintenance of the wife and children arises.

When the woman leaves matrimonial home, the situation is quite different. She is deprived of many a comforts. Sometimes her faith in life reduces. Sometimes, she fails she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance to wife has been perceived as a matter of social justice. Sometimes a plea is advanced by the husband, that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy bodied and is in a position to support himself, he is under the legal obligation to support his wife, for the wife's right to receive maintenance u/s 125 of the Cr.P.C., unless disqualified, is an absolute right. Thus, it is an obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain his wife due to financial constraint as long as he is capable of earning.

12. Besides, the impugned order relates only to grant of interim maintenance. From the perusal of the impugned order, it

cannot be said that the learned Family Court has not applied its mind to the correct parameters or that the impugned order suffers from any perversity or jurisdictional error. Accordingly, no case is made out to interfere with the impugned order. Petition is dismissed.

13. Rule is, accordingly, discharged. In the facts and circumstances of the present case, the petitioner is directed to pay costs of Rs.15,000/- to the respondent within a period of 4 weeks from today. The petitioner is also directed to clear arrears towards interim maintenance, if there be any arrears, within a period of 4 weeks from today.

14. It is, however, made clear that the observations in the impugned order as well as the present order, are only prima facie and for the purpose of deciding the issue of interim maintenance. Accordingly, the Family Court need not be influenced by any such observations, whilst deciding the main matter and determining the alimony/maintenance.

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

(M.S. SONAK, J.)