

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

WRIT PETITION (STAMP) NO.7165 OF 2016

Mr. Vishal Keshav Tiwari

.. Petitioner

Versus

Mrs. Archana Vishal Tiwari

.. Respondent

Mr. Vishal Kanade i/by Raj Legal, for the Petitioner.

Mr. U. S. Jain, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 29th APRIL 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 18.02.2016 passed by the Learned Principal Judge, Family Court, Mumbai, by which order, the application Exh.52 for enhancement of the interim maintenance granted to the minor son Ansh was enhanced from Rs.5000/- to Rs.15,000/- per month from the date of the application i.e. since 24.08.2015 till final disposal of the Petition.

2. The Respondent wife pending the Petition for divorce had filed an application for interim maintenance being Exh.13. In so far as the said application is concerned, an interim maintenance at the rate of Rs.20,000/- for the Respondent wife and Rs.5000/- towards the minor son Ansh was granted. The same was granted by the Trial Court by recording a finding that the Petitioner husband is having a job which pays him

Rs.20,00,000/- and since he is not disclosing his true income, it can be presumed that he has the capacity to earn in the vicinity of that amount. The said order granting interim maintenance at the aforesaid rate dated 24.04.2013 passed by the Learned Principal Judge of the Family Court, Mumbai came to be challenged by the Petitioner by way of Writ Petition No.8624 of 2013. In the said Writ Petition, no reliefs were granted to the Petitioner husband, save and except to the extent that an amount of Rs.4000/- which was directed to be paid by way of ad-interim maintenance was directed to be adjusted against the interim maintenance granted by the order dated 24.07.2013.

3. It is required to be noted that at the time when the interim maintenance was fixed, the son Ansh was about one year and eleven months old. The Respondent wife filed the instant application Exh.52 on 24.08.2015 for enhancement of the interim maintenance to the son Ansh and the ground made out was that Ansh had become four years of age, and the circumstances therefore have changed resulting in the increase in expenses of the child towards the school fees, tuition fees, extra curricular activities etc. It was averred that son Ansh is allergic to certain surrounding and needs extra care from birth and therefore expenses towards his medical care have to be incurred. Additional expenses for education, upbringing, extra curricular activities, clothes etc. are ever

increasing. It was also averred that the Respondent wife being a sole care taker of son Ansh is required to spend monies on his food, clothing, milk etc which the Respondent wife has not even accounted for. It was lastly averred that since the expenses of Ansh were bound to increase further and hence the cause for filing the instant application Exh.52 for enhancement of the interim maintenance for son Ansh had arisen.

4. The said application was opposed to on behalf of the Petitioner husband. The averments made in the application that the husband is partner of M/s Sai Health Care etc. were sought to be denied. It was also sought to be denied that he has no share in the property which was mentioned in the application, as also all other allegations made in the application were denied. The Trial Court i.e. the Learned Principal Judge, Family Court, Mumbai considered the said application Exh.52 and has by the impugned order dated 18.02.2016 partly allowed the same thereby enhancing the interim maintenance for the child Ansh from Rs.5000/- to Rs.15,000/- per month. The Learned Principal Judge was of the view that since the child Ansh is now four years of age, his interim maintenance needs to be increased. The Learned Principal Judge, Family Court, Mumbai, also observed that having regard to the material on record and considering the fact that enhancement is restricted to the maintenance of the minor child, case for grant of enhanced maintenance for the minor

child was made out.

5. The Learned Counsel appearing on behalf of the Respondent wife has filed a compilation of documents on record. The bills of medical expenses have also been made a part of the compilation as also a statement of the aggregate expenses incurred by the Respondent wife in the year 2015 has been annexed to the compilation, which shows that the expenses incurred are in the sum of Rs.1,70,000/-.

6. To counter the same, the Learned Counsel appearing for the Petitioner husband Mr. Vishal Kanade would submit that the enhancement has been granted without considering the financial wherewithal of the Petitioner husband. It was the submission of Mr. Vishal Kanade that on account of enhancement granted to the son Ansh, the same would have an impact on whatever is left with the Petitioner after the payment of the initial amount of interim compensation which was fixed at the rate of Rs.25,000/-.

7. In my view, it is not possible to accept the contentions raised on behalf of the Petitioner husband by Mr. Vishal Kanade. As observed by the Family Court, at the time when the interim maintenance was fixed Ansh was about one year and 11 months old. However, Ansh is now four years old and his requirements have obviously changed considering his

age. The material placed on record by way of the additional compilation also discloses that Ansh seems to be having respiratory infection problem on account of which expenses have been incurred for treatment by the Respondent wife. The Respondent wife is also required to incur expenses for his education as earlier he was in a Kindergarden School and is now in a regular School for which the school fees as well as the tuition fees have to be paid as also the charges for transport from house to school. In my view, therefore, the enhancement granted from Rs.5000/- to Rs.15,000/- considering the present day cost of living cannot be said to be exorbitant or excessive. The Petitioner husband being the father of Ansh obviously has an obligation to see to it that the child lives in the same comfort he would have been entitled to if he was living with him. 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.

8. Needless to state that the findings recorded are only for the purposes of the interim maintenances, the proceedings in question would be decided on their own merits and in accordance with law.

[R.M. SAVANT, J]