

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4542 OF 2016

Rahul R. Khedkar

.. Petitioner

vs.

Dr. Mrs. Madhuri R. Khedkar

.. Respondent

Mr. Surel S. Shah for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 16 JUNE 2016.

P.C. :-

1] Heard Mr. Surel Shah, learned counsel for the petitioner.

2] The challenge in this petition is to the order dated 14 January 2015 made by the Civil Judge, Senior Division, Sangli, directing the petitioner to pay interim maintenance of Rs.5000/- per month to the respondent-wife and Rs.2000/- per month to the minor daughter from the date of filing of application, i.e., 25 August 2015 till the final decision in the main petition.

3] Mr. Shah, learned counsel for the petitioner, submitted that under the provisions of the Protection of Women from Domestic Violence Act, 2005 (said Act), the respondent had recently been awarded Rs.8,000/- by way of maintenance. Further, Mr. Shah

submitted that the respondent-wife is a Doctor, who is very much able to maintain herself and daughter. In these circumstances, Mr. Shah submitted that the award of interim maintenance is excessive and warrants interference by this Court.

4] The award of maintenance under the provisions of the said Act, was not circumstance available before the learned Civil Judge when the impugned order was made. Besides, it is not known whether such award has been made after taking into consideration the impugned order. The said circumstance is not sufficient to interfere with the impugned order. At the highest, if the petitioner is so advised, the petitioner may seek a variation of the impugned order before the Civil Judge. However, it is made clear that any such application for variation will be considered by the Civil Judge, on its own merits and in accordance with law. Even the issue of maintainability of such application is kept open. Suffice to note however, that the impugned order does not warrant any interference on this ground.

5] The circumstance that respondent No.1 is herself a Doctor has been taken into consideration by the Civil Judge whilst ordering the

interim maintenance. Possibly, it is on this score, the maintenance quantum has been determined. The responsibility to maintain the daughter cannot be entirely shifted upon the respondent-wife, merely because she is a Doctor and she is in a position to earn some income. There is nothing on record to indicate that respondent-wife is currently earning sufficient income, in order to maintain herself or minor daughter. Besides, the interim maintenance awarded does not, in the facts and circumstances of the present case, appear to be excessive. The petitioner has also not been very candid in the matter of disclosure of his true and correct income. The petitioner has however, admitted that he is serving as an Officer in Private Company. The petitioner should have disclosed true and correct facts with regard to his salary or income from any other source. In absence of such disclosure, the Civil Court was entitled to draw certain reasonable inference.

6] Accordingly, there is no case made out to interfere with the impugned order. This petition is therefore, dismissed. There shall, however, be no order as to costs.

7] It is however, clarified that in determining the final amount of maintenance, if any, the Civil Judge shall not be influenced by any of the observations in the impugned order or for that matter the observations in the present order.

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

(M. S. SONAK, J.)

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