

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

WRIT PETITION NO. 6610 of 2014

Nisha Dinesh Singh Chahar

.. Petitioner

Vs.

Dinesh Bharat Singh Chahar

.. Respondent

.....

Ms A.R.S. Baxi for petitioner

None for respondent

.....

CORAM : M.S. SONAK J.

DATE : AUGUST 26, 2016.

P.C. :

1. Heard Ms Baxi for the petitioner. Neither the respondent nor his advocate are present at the stage of final hearing.
2. At the stage of grant of Rule and interim relief on 27th November, 2015, the following order was made:

“1. *Heard.*

2. *Rule.*

3. *By way of adinterim relief, the Respondent is directed to pay further maintenance of Rs.10,000/- i.e Rs.5,000/- per child per month from the date of impugned order dated 19th April, 2014. The time limit for payment of arrears shall be upto 30th January, 2016.*

4. *Place this matter for confirmation of ad-interim relief on 5th February, 2016.*

5. *It is made clear that pendency of this petition shall not hinder the Family Court from proceeding with petition No. A-651 of 2013. In fact, the Family Court is directed to*

proceed with the matter.

6. *The brief reason for grant of such ad-interim relief is that the Family Court has failed to take into consideration the documents, which at least prima-facie, indicated that the Petitioner had resigned from her services. On this basis, the impugned order has not only denied any maintenance to the Petitioner, but further required the Petitioner to bear the responsibility of the children's maintenance to the extent of 50%. In the impugned order, the Family Court has not believed that the Respondent, who is working as National Head of ATS Cargo Private Limited, was drawing emoluments of only Rs.6 Lacs per annum. In any case, even assuming that was the earnings of the Respondent, it is only proper that the Respondent pays towards the maintenance of the children at this interim stage. Hence, the ad-interim order.”*

3. Ms Baxi, learned counsel for the petitioner, makes a statement that despite the aforesaid order dated 27th November, 2015, the respondent has not bothered to clear the entire arrears or for that matter pay maintenance at the rate of Rs.10,000/- per month, i.e, maintenance of Rs.5,000/- per month per child. This being the position, no useful purpose will be served by adjourning the matter any further.

4. Ms Baxi has submitted that in the impugned order dated 19th April, 2014, there is an error apperent on the face of record. In the impugned order, the Family Court has virtually accepted the position that two children need maintenance of Rs.10,000/- per month per child. However, in the operative portion, there is some ambiguity, as a result of which, the order is interpreted to mean that interim maintenance of only Rs.5,000/- per child per month came to be awarded. Ms Baxi further submits that the material placed on record clearly establishes that the

petitioner was constrained to resign from her previous employment and, therefore, is not in a position either to maintain herself or the children. In contrast, there is material on record to indicate that the respondent is the National Head of ATS Cargo Private Limited. Ms Baxi submits that it is inconceivable that the National Head's salary is only Rs.6 Lacs per annum. She points out that this is also the views expressed by the Family Court in the impugned order. However, only because the respondent failed to produce true and correct particulars with regard to his income, the respondent has been made liable to bear the expenses towards maintenance only to the extent of fifty percent and not more. Ms Baxi also pointed out that the denial of maintenance to the petitioner herself is entirely unjustified particularly considering the position that the petitioner has resigned from the service. For all these reasons, Ms Baxi submits that the interim maintenance of Rs.10,000/- per child per month, is required to be awarded to the two minor children and further the entire responsibility towards such maintenance is liable to be cast upon the respondent alone. Ms Baxi further submits that reasonable amount of maintenance is also required to be awarded in favour of the petitioner herself since she is unable to maintain herself.

5. Since, neither the respondent is present nor represented, a reference is necessary to the affidavit filed by the respondent opposing the

grant of reliefs in the present petition. The respondent has stated that the petitioner has left the matrimonial home without any reasonable cause. Further, it is stated that the petitioner is earning Rs.80,000/- per month being a senior team leader in a multi-national company and, therefore, is not entitled to any maintenance. The affidavit also states that for reasons attributable to the petitioner, the respondent has resigned from National Head of ATS Cargo Private Limited, which in any case was a small private company and therefore the designation of '*National Head*' was quite misleading. In the affidavit, the respondent has stated that his average earning was Rs.35,000/- to Rs.45,000/- per month, out of which the respondent is required to bear expenses of Rs.4000/- per month towards society charges. The respondent has also to pay E.M.I. of Rs.22,200/- per month in respect of loan obtained by him. Finally, the affidavit states that the petitioner has made false statement with regard to her employment / unemployment and such conduct on the part of the petitioner disentitles her to any relief.

6. There does appear to be merit in the contention that the application for interim maintenance has been disposed of, by the Family Court in a quite casual manner and without addressing itself to the relevant parameters applicable in such matters. The Family Court, it appears, has permitted itself to be swayed by the circumstance that there

was no mention to the petitioner's resignation from services in the application seeking interim maintenance. The Family Court has, however, failed to appreciate that on the date when the application for interim maintenance was filed the petitioner was in service, but has resigned subsequently i.e., 28th November, 2013. The factum of resignation was brought on record by means of written document. Atleast, at the stage of consideration of the issue of interim maintenance, there was no reason to disbelieve this position. Further, the Family Court has granted excessive leeway to the respondent-husband, in the determination of his income simply because neither the petitioner was in a position to produce the precise details nor did the respondent-husband himself produce the true and correct particulars in this regard. There is ambiguity in the text of the judgment and the final order when it comes to determination of interim maintenance to be paid to the two minor children. There does not appear to be any proper basis to apportion the liability of maintaining the children between the petitioner and the respondent, considering the material on record. For all these reasons, the impugned order warrants interference atleast partly.

7. Insofar as denial of interim maintenance to the petitioner wife is concerned, the impugned order may not warrant any interference. This is because there is material on record to establish that the petitioner wife is well qualified, has experience in handling responsible positions while in

service. The finding at the interim stage when the petitioner wife has been and is able to maintain herself, therefore, does not warrant any interference. However, the Family Court, having recorded an interim finding that the children would require interim maintenance of Rs.10,000/- per month per child, there was really no warrant to direct the petitioner and the respondent to share such amount in equal measure.

8. The Family Court has failed to appreciate that when ad-interim maintenance was applied, the minor daughter was 12 years of age and the minor son was 9 years of age. By now the children are stated to be 15 and 12 years respectively. The custody of the children is with the petitioner. It is the petitioner who presently maintains the children and such maintenance involves the expenses towards their education. Since the children are schooling, it is obvious considerable expenditure is required for purpose of their educational and other needs. The petitioner is already contributing to the maintenance of the children, by actually taking care of them and their needs. In such circumstances, to require the petitioner to contribute to the expenditure of 50 percent to the maintenance requirement of the children, is by no means fair and proper. As it is, the petitioner, is single handedly taking care of the children. Despite orders for interim maintenance, the respondent is stated to be irregular in the matter of payment of maintenance amount. In such circumstances, the impugned order, to the extent, it requires the petitioner

to contribute to the maintenance of the children to the extent of 50 percent warrants interference.

9. The material on record establishes that the respondent was 'National Head' of ATS Cargo Private Limited, at the stage, when impugned order was made. The material on record is sufficient to draw an inference that the respondent was drawing substantial income by virtue of such position. In the affidavit filed by the respondent, the respondent has been far from candid insofar as his earnings are concerned. The respondent, now claims to have changed his job. The respondent claims that he is paying E.M.I. towards bank loan, the details of which has not been disclosed. On such basis, the petitioner cannot avoid the liability to pay maintenance to the children or to seek reduction in the liability towards payment of maintenance to the children.

10. In *Bhuwan M. Singh V/s. Meena and others (2015) 6 SCC 353*, the Hon'ble Apex Court dealing with the provisions of section 125 of the Code of Criminal Procedure held that 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. Although, at ad-interim stage, the denial of interim maintenance to the petitioner wife is not being interfered, the respondent cannot escape the liability of paying for maintenance of the children. Such maintenance has been determined at rate of Rs.10,000/- per child per month, notwithstanding the ambiguity in the Family Court's order. The determination at the rate of Rs.10,000/- per month per child, as and by way of interim maintenance, appears to be fair and proper in the facts and circumstances of the present case. This entire amount will have to be paid by the respondent-husband. It is pertinent to note that the

respondent-husband has not challenged the determination of maintenance at the rate of Rs.10,000/- per month per child and therefore there is really no reason to vary such determination at the interim stage.

12. Accordingly, the present petition is partly allowed. The impugned order is modified. The respondent shall bear the entire liability of payment of interim maintenance at the rate of Rs.10,000/- per month per child from the date of filing of application seeking maintenance. The respondent is directed to clear the arrears of maintenance, as expeditiously as possible, and in any case within a period of four weeks from today.

13. Rule is made partly absolute. There shall be no order as to costs.

14. It is made clear that the observations in the impugned order or for that matter in the present order is only *prima-facie* for the purpose of determination of the liability of interim maintenance. Thus, the Family Court is free to decide the matter finally and need not be influenced by these observations. The matter to be finally decided on its own merits in accordance with law.

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

(M.S. SONAK, J.)