

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

WRIT PETITION NO. 7379 OF 2015

Group Captain Nitin Kanitkar (Retd.)	... Petitioner
V/s.	
Abhijit Dilip Sarwate	... Respondent

Ms. Sarah Kapadia for petitioner.
Mr. N. Chavan i/b Mr. Abhijeet Sarwate for respondent.

CORAM : M.S. SONAK, J.
DATE : 15 JUNE, 2016.

PC. :

1. Rule.
2. At the request of and by the consent of the counsel for the parties, Rule is made returnable forthwith.
3. The challenge in this Petition is to the order dated 29.03.2014 made by the Family Court No.5, Pune, awarding the respondent-wife interim maintenance of Rs.30,000/- per month, in addition to the payment of Rs.10,000/- per month i.e. in all, awarding the respondent-wife and the then minor son interim maintenance of Rs.40,000/- per month.
4. The petitioner had instituted P.A. No.801 of 2011, seeking divorce from the respondent. The said Petition was in fact allowed by ex-parte judgment and decree dated 06.03.2012. The respondent, thereafter, instituted Civil Misc. Application No.9 of 2013 for recall of the

ex-parte judgment and decree. The said Civil Application was allowed on 24.10.2013 and the ex-parte judgment and decree dated 06.03.2012 was accordingly set aside. No orders were however made with regard to revival of Misc. Applications pending in P.A. No.801 of 2011, including in particular the application taken up by the respondent-wife seeking interim maintenance.

5. The respondent-wife, on 29.03.2014 made an application (Exh.16) seeking the following reliefs :-

- “a) Application be allowed.
- b) Applications pending in Civil M.A. No.09/2013 be considered to be the Applications filed in P.A. No.801/2011 and the same be allowed accordingly as prayed for.
- c) Necessary directions be given to the Clerk of the Court, to do the needful and thereby, given them an Exh. No.'s as in the file P.A. No. 801/2011.
- d) Any other just and equitable Order may kindly be passed.”

6. On the said date, the Family Court Judge made the following order on the aforesaid application.

“Seen, the application will be considered in P.A. Petition. Same be exhibited.”

7. There is really nothing objectionable in so far as the aforesaid order is concerned. Learned counsel for the petitioner also accepts that such an order could always be made, rather than requiring the respondent-wife to make fresh applications seeking interim maintenance.

8. However, it transpires that the Family Court soon after the aforesaid order was made, proceeded to make yet another order on 29.03.2014 itself, awarding interim maintenance of Rs.40,000/- to the respondent-wife and her then minor son. It is this order, which has been impugned in the present Petition.

9. Learned counsel for the petitioner has submitted and such submission is substantially borne out from the record that there was no opportunity of hearing afforded to the petitioner before the impugned order was made. No doubt the order records that the petitioner was not present on the said date when the impugned order was made. However, taking into consideration the facts and circumstances, it was expected of the Family Court to have granted additional opportunity to the petitioner to make submissions in the context of application seeking interim maintenance, now that the decision was taken to revive the pending application for interim maintenance. In any case, upon an important matter concerning interim maintenance and in the facts and circumstances of the present case, it does appear that reasonable opportunity has been denied to the petitioner. On this ground alone and without going into merits and demerits of the contentions of the parties, the impugned order is liable to set aside and is hereby set aside.

10. Learned counsel for the petitioner states that in pursuance of the impugned order, the petitioner has paid the interim maintenance to the respondent-wife and the then minor son. Learned counsel for the petitioner points out that the son is no longer a minor, having attained majority in the meanwhile. In the facts and circumstances of the present

case, it will not be appropriate to require the respondent-wife and/or the son to refund the amounts received by them in pursuance of the impugned order. At the highest, directions can be issued in the matter of adjustment.

11. Besides, it would also be appropriate that the petitioner continues to pay to the respondent-wife sum of Rs.10,000/- as and by way of ad-interim maintenance till the application for interim maintenance is re-decided by the Family Court. In addition to this, learned counsel for the petitioner has stated that the petitioner has always paid the educational fees concerning their son and shall continue to make such payments even in future, without prejudice to his rights and contentions in the matter. This statement is accordingly accepted.

12. Petition is accordingly disposed of with the following order :-

a) The impugned order dated 29.03.2014, awarding the respondent wife/son interim maintenance is hereby set aside.

b) Notwithstanding the aforesaid order, the respondent-wife/son shall not be liable to refund the maintenance amounts received by them up to in pursuance of the impugned order dated 29.03.2014. However, such amounts shall be liable to adjustment, depending upon the outcome of the application for interim maintenance, which, the Family Court is directed to decide as expeditiously as

possible, on its own merits and in accordance with law.

c) The Family Court is directed to dispose of respondent's application for interim maintenance within a period of two months from the date of production of authenticated copy of this order. Parties to produce authenticated copy of this order within one week from today so that the application for interim maintenance if possible, can be argued on 04.07.2016 which is the date fixed in P.A. No.801 of 2012 by the Family Court.

d) Till the disposal of the application for interim maintenance, the petitioner shall pay to the respondent-wife ad-interim maintenance @ Rs.10,000/- per month. In addition to this, the statement made on behalf of the petitioner with regard to payment of the educational expenses to the son, is accepted and the petitioner is directed to abide by the same.

e) All contentions of all parties on merits of the matter are kept open be decided by the Family Court.

f) All concerned to act upon the authenticated copy of this order.

13. This Petition is disposed of in aforesaid terms.

14. There shall be no order as to costs.

(M.S. SONAK, J.)