

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7861 OF 2015

Nileshsinh Jaswantsinh Parmar	..	Petitioner
VS.		
Smt. Nitaben Nileshsinh Parmar	..	Respondent

Ms Anita Bhaktwani for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2016

P.C :

1] The challenge in this petition is to the order dated 24 June 2015, by which the Principal District Judge, Dadra & Nagar Haveli Silvassa, has enhanced the alimony from Rs.2,000/- per month to Rs.4,000/- per month.

2] Ms Bhaktwani, learned counsel for the petitioner has submitted that there was absolutely no change in circumstances and therefore, there was no question of exercising powers under section 25(2) of the Hindu Marriage Act 1956 (said Act) and order enhancement of alimony. Ms Bhaktwani has submitted that even the impugned order at paragraph 16 records that there is no evidence with regard to change in circumstances adduced by the respondent wife. Ms. Bhaktwani also submitted that though the petitioner may be an owner of several landed properties, the properties are subject matter of disputes pending in this court and therefore, the petitioner is drawing no income from out of the said

properties. Ms Bhaktwani has submitted that since the impugned order has not taken into consideration all these vital aspects, the same is required to be interfered with.

3] Having given due consideration to the submissions made by learned counsel for the petitioner and perused the record, in my judgment, no case is made out to interfere with the impugned order. In the deposition of the respondent, she has categorically stated that the respondent is drawing income of Rs.30,000/- from his business. Further, she has stated that the petitioner has several immovable properties and details of some of them have also been stated. There is a statement that the petitioner is earning more than Rs.10 lakhs per year as income from out of the said landed properties. Reference is required to be made to paragraphs 6 and 9 of the affidavit in lieu of examination-in-chief of the respondent wife, which read thus :

“6. I further state that even after the decree of divorce, I have neither remarried nor involved in any kind of physical relations with anybody. Therefore, the present opponent is legally and factually liable to pay the enhance alimony amount to me. In all, present Opponent is getting monthly income of Rs.30,000/- apart from his share in the large valuable immovable properties of his family.

9. I further state that the opponent is having vast landed properties, which is running in the name of his father. His father is more than 90 years old. He is residing with his father. The lands situated at Village Naroli are having total

area admeasuring H.3-33 Are. The lands situated at Village Khadoli are having total area admeasuring H. 4-71 Are. Thus, total area of their lands in H.8-04 Are. His brothers have already taken their share and the lands of their share running in their individual names. Therefore, the opponent is singularly entitled for the above mentioned lands and which are managed by him only. Therefore, he is doing the management and getting income from the said agricultural lands. The income from those agricultural land is more than ten lacs rupees per year. The true copy of records of rights of the lands of the family of the opponent are filed along with the separate list. They may kindly be exhibited."

4] If the entire cross-examination is perused, it is significant to note that there is not even a suggestion that the statement with regard to income from immovable property or otherwise is false. All that has come on record during the course of cross-examination is that the respondent wife was questioned as to whether she has any documentary evidence with her and she has replied in the negative.

5] The affidavit in lieu of examination-in-chief of the petitioner makes an interesting reading. Therein, the petitioner has virtually denied every statement contained either in the application seeking enhancement or in the affidavit in lieu of examination-in-chief tendered by the respondent. Even most obvious matters like the statement made by the respondent wife that she has grown older since 2009 or that prices of commodities have increased since the year 2009 have also been routinely denied. Such kind of evidence,

hardly inspires any confidence. Further, upon perusing such evidence, it is quite clear that the petitioner has not been candid to the court but seeks to rely only upon the circumstance that it is virtually impossible for the respondent wife to gather evidence with regard to the precise income of the petitioner. In the deposition the petitioner has no doubt stated that the property is subject matter of litigation in this court. However, there is no averment that the possession of said properties is not with the petitioner or that there is some restraint order on account of which the petitioner is unable to cultivate the immovable properties or draw out some income therefrom.

6] The stray observations in the impugned order that there is no evidence produced on record by the respondent to indicate the change in circumstances, is to be read in the proper context. Soon after such statement, the Principal District Judge has chosen to take judicial notice of the circumstance that prices of commodities / items have increased suitably since the year 2009 when alimony was determined at Rs.2,000/- per month. The material on record undoubtedly indicates that the respondent wife is advanced in age and therefore, there are certain restrictions in the matters of activities which she could discharge earlier. The impugned order also notes that the petitioner is in possession of immovable properties admeasuring almost 11 Ha. The mere circumstance that

such properties may be subject matter of litigation is no ground to infer that the petitioner is drawing no income whatsoever from such properties.

7] The enhancement from Rs.2,000/- to Rs.4,000/- and that too, after the initial alimony was fixed in the year 2009, is in fact, on the conservative side, in the facts and circumstances of the present case. The Principal District Judge expressed inability to enhance alimony to Rs.7,000/- particularly because there was no specific evidence forthcoming in the context of the income of the petitioner. The petitioner has obviously not been candid to the court and has therefore succeeded in creating such an impression. However, since, the impugned order has not been challenged by the respondent, the matter is left at that.

8] For all the aforesaid reasons, the present petition is dismissed. The petitioner to pay costs of Rs.2,000/- (Rupees Two Thousand) to the respondent within a period of four weeks from today.

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

(M. S. SONAK, J.)