

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9810 OF 2013

Dr. Ashrita S. Toshniwal	..	Petitioner
vs.		
Sandeep S. Toshniwal	..	Respondent

Mrs. Manjula Rao for Petitioner.
Ms Naira Jejeebhoy and Ms Ishika Tolani i/b. Ms T. F. Irani for Respondent.

CORAM : M. S. SONAK, J.
DATE: 22 JANUARY 2016

P.C :

1] The challenge in this petition is to the order dated 19 June 2013, to the extent, it denies interim maintenance to the petitioner wife. By the same order, maintenance has however been granted to the children and that part of the order is not challenged before me. The learned counsel for the respondent however states that the respondent has applied for variation in the quantum of maintenance in so far as the children are concerned. That matter may be considered by the Family Court in accordance with law on its own merits.

2] At this stage, the trial in petition nos. C-123 of 2011 and 233 of 2011 has already commenced. The respondent has concluded his examination-in-chief and the cross-examination is on. The petitioner is Orthodontist and the children are already getting

maintenance. At this stage, therefore no useful purpose would be served in examining whether the petitioner deserves any interim maintenance during the pendency of the petition nos. C-123 of 2011 and 233 of 2011, instead, it would be appropriate if suitable directions are issued for disposal of the two petitions as expeditiously as possible and in any case within a period of one year from today. Such directions are accordingly issued.

3] There is however one more aspect that needs to be considered. In the impugned order the Family Court, at paragraph 12 has observed that the petitioner has not come before the Court with clean hands and has tried to suppress her source of income with unfair intention. The learned counsel for the petitioner points out that every possible disclosure was indeed made both in the petition as well as the documents accompanying the petition. In particular reference was invited to paragraph 7 of the petition instituted by the petitioner. On basis of this, the learned counsel for the petitioner contends that the observations were unwarranted and that the same might unduly prejudice the case of the petitioner at the final stage.

4] On the other hand, the learned counsel for the respondent submits that there was basis for the observations made and this Court ought not to interfere with the observations.

5] It is to be noted that the observations were made at the interim stage. It is settled position in law that the observations made or even the view expressed at the stage of deciding interim applications, is normally not to be taken into consideration at the stage of final disposal by which time, the evidence led by both the parties is very much available to the Family Court. Therefore, this is hardly the occasion to go into the issue as to whether such observations, though, may appear to be harsh, were justified or not. However, if there being any ambiguity, it is clarified that the Family Court in finally disposing of the two petitions shall not permit itself to be influenced by the said observations or for that matter any of the observations made in the order which is impugned in this petition. The petitions may be finally disposed of, without advertent to such observations or *prima facie* findings in the interim order which is impugned in this petition. With this clarification, there is no necessity to make any further orders.

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

(M. S. SONAK, J.)