

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

WRIT PETITION NO.9108 OF 2014

Shri. Dr. Ashok Mahadev Khade

.. Petitioner

Versus

Sou. Dr. Vandana Ashok Khade

.. Respondent

Mr. A. M. Savagave, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 31st MARCH 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 02.08.2014 passed by the Learned Joint Civil Judge, Senior Division, Kalyan, by which order, the application Exh.5 filed by the Respondent wife came to be allowed and the interim maintenance at the rate of Rs.10,000/- per month came to be awarded as also the litigation expenses of Rs.5,000/-.

2. The said application has been filed in Marriage Petition No.210 of 2012 which has been filed by the Respondent herein for divorce under Section 13(1)(ia) of the Hindu Marriage Act. It is in the said proceedings that the instant application Exh.5 came to be filed for interim maintenance. It was the case of the Respondent wife that the Petitioner who is a doctor by profession is earning more than Rs.3,00,000/- per month, where as the Petitioner is not in a position to maintain herself and

had therefore sought maintenance from the Petitioner husband. In so far as the said application for interim maintenance is concerned, it is required to be noted that it was the case of the petitioner husband that the Respondent wife's income was more than his income, as her income is in the region of Rs.2,00,000/- per month. However, significantly both the parties did not produce any evidence in support of their respective assertions. The Trial Court therefore had to proceed on the basis of the pleadings of the parties. The Trial Court observed that the educational qualifications of the Petitioner husband are far superior than that of the Respondent wife and therefore his income has to be more than the Respondent wife. The Trial Court therefore deemed it appropriate to fix Rs.10,000/- as interim maintenance by the impugned order dated 02.08.2014. It was the submission of the Learned Counsel for the Petitioner that the Trial Court has not considered the case of the Petitioner husband as stated in his reply to the said application. It was the submission of the Learned Counsel that the Respondent wife also being connected with the medical profession her income was such which did not warrant the grant of any interim maintenance.

3. In the said context, it is required to be noted that the Petitioner husband has the qualification of M.S. (Anatomy), whereas the Respondent wife possesses the qualification of B.A.M.S.. In the absence of

any material on record placed by the parties, the Trial Court was right in drawing an inference that since the educational qualifications of the Petitioner husband were superior than that of the wife, his income is obviously more than that of wife and accordingly fixed interim maintenance at Rs.10,000/- per month.

4. In my view, having regard to the cost of living in the present times, the interim maintenance fixed at Rs.10,000/- cannot be said to be excessive or exorbitant. The judgment of a Learned Single Judge of this Court placed by the Learned Counsel for the Petitioner reported in 2010(4) Bom.C.R. 816 in the matter of Ritula Singh Vs. Rajeshwar Singh (Lt.Col.) has no application as in the said case, it had come on record that the wife was a teacher who was drawing a salary of 35,000/- and it is in the said circumstances that the Learned Single Judge held that she would not be entitled to interim maintenance. Such is not the situation in the instant case as there is absolutely no evidence on record as regards the income of the wife. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]