

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO.10290 OF 2013

Ms. Sangeeta Sanjay Berde petitioner

versus

Mr. Sanjay Bandusheth Berde ... respondent

None for the petitioner.

Mr.Suraj Kudalkar for the respondent.

CORAM : M.S. SONAK, J.

DATE : 26th AUGUST, 2016

PC. :

1. Neither the petitioner nor her advocate are present.

Mr.Suraj Kudalkar appears for the respondent husband.

2. The challenge in this petition is to the order dated 26/07/2013 made by the Family Court at Bandra in Petition No.A-1744 of 2012 to the extent the said order directs the petitioner wife to pay maintenance at the rate of Rs.4,000/- per month to the respondent husband.

3. Neither the petitioner nor the learned Counsel for the petitioner are present in the Court. Record has been perused. The impugned order has also been perused. Since, prima facie, the reasoning in the impugned order was found to be defective, the learned Counsel for the respondent was granted an opportunity to make his submissions in defence of the impugned order.

4. The impugned order in paragraph Nos.14, 15 and 17 reads thus;

“(14) As stated above the wife clearly admits in her pleadings that the husband is in habit of drinking and not working. She herself states that he is running behind her for Rs.100/- in every morning. As per wife the husband is having two shops at Mazgaon. There is not a single document on record to show the description of property, ownership over the shops. The wife could have easily produced the proof regarding ownership of the shop. Most important is, income generated from the shop is not mentioned and the share of the husband is also not mentioned.

15. *It is not in dispute that the husband is suffering from illness. It is necessary to mention here that husband was present before this Court in person. Prima facie appeared very weak/pale. His Physique was not very well built. He was even unable to walk. There is no dispute that he is addicted to liquor.*

17. *It is clear from the pleadings that as on today, the husband is either doing small labour work and has no fixed source of income. The wife is placed in a higher position, of course with her own hard work. The parties cohabited for long time. Even if husband is at fault to some extent, he is unable to maintain the standard of living, as per the reputation of wife and at least to get the basic needs. In such circumstances, Rs.4,000/- per month will be sufficient to meet the ends of justice.”*

5. From the aforesaid reasoning, it appears that the maintenance was awarded in favour of the respondent husband, because the learned Family Court Judge found that there was no dispute that he is addicted to liquor and consequently unable to either walk or work.

6. Mr.Kudalkar, learned Counsel for the respondent, has submitted that the respondent has, in fact, been harassed by the petitioner wife. He pointed out that at the behest of the petitioner's mother, a false complaint was made against the respondent, which led to the respondent's incarceration in prison for about one month. Mr.Kudalkar further pointed out that under the provisions of the Protection of Women from Domestic Violence Act, 2005 (DV

Act), the petitioner obtained an order restraining the respondent from entering into the matrimonial home. It is the case of Mr.Kudalkar that such an order was obtained by fraud or in any case without offering adequate opportunity of hearing to the respondent/ husband. Mr. Kudalkar has also submitted that the petitioner wife has taken away the property and money of the respondent/ husband and it is on account of such harassment that the petitioner has been reduced to a situation whereby he cannot do any effective work. Mr.Kudalkar submits that the respondent has no place to stay and presently stays on the footpath. Mr.Kudalkar also submitted that the petitioner wife is responsible for the addiction of the respondent husband. Mr.Kudalkar hastened to add that presently the addiction does not continue and the position indicated in the impugned order was the position when the application for interim maintenance was applied for by the respondent husband.

7. Having evaluated the contentions raised, I am unable to persuade myself that the impugned order deserves to be sustained. In the first place, none of the factors, which have been

adverted to by the learned Counsel for the respondent, find any reflection in the impugned order. The impugned order will have to be tested on the basis of reasoning reflected in the order itself. It is not sufficient that such matters were stated by the respondent in his application seeking interim maintenance. At this stage, it is not even possible to say that such matters were stated in details by the respondent husband in his application seeking interim maintenance. At least the impugned order nowhere indicates that such matters have been accepted prima facie whilst making the impugned order. The reasoning as reflected in the impugned order is that the respondent husband is addicted to liquor and, therefore, not in a position to either walk or work. On the contrary, since the petitioner is reported to have a good job and is earning substantial income, it is her duty to maintain the respondent by providing maintenance of Rs.4,000/- per month. In my judgment, such kind of reasoning is not sustainable.

8. At the stage of determining the issue of interim maintenance, there was no question of proceeding on the basis that the petitioner or her mother had made any false complaints or

that the petitioner had obtained any orders on the basis of fraud. If any orders have been obtained by the petitioner on the basis of fraud, it is always open to the respondent to take out appropriate proceedings and secure a recall of such orders. However, since the order for maintenance in the present case proceeds on the basis of reasoning indicated hereinabove, and which reasoning, to my mind, is unsustainable, the impugned order will have to be interfered with.

9. In matters of this nature, whilst there is no bar to a husband claiming maintenance from the wife, the husband will have to demonstrate that for good and sufficient reasons, he is unable to maintain himself. The circumstance that the husband is addicted to liquor, cannot be regarded as a good or sufficient circumstance to claim maintenance. Since this is primarily the only reasoning which is reflected in the impugned order, there is no option but to interfere with the impugned order.

10. For the aforesaid reasons, the impugned order to the extent of interim maintenance to the respondent is hereby set aside. Rule is made absolute. There shall be no order as to costs.

11. Since the impugned order is set aside, the amounts deposited by the petitioner in pursuance of the interim orders made in the present petition may be withdrawn by the petitioner. The Registry, accordingly, to permit the petitioner to withdraw the said amounts alongwith interest, if any, that may have been accrued thereon unconditionally.

12. It is, however, made clear that the observations in this order are only prima facie and the Family Court taking up Petition No.A-1744 of 2012, need not be influenced by such observations at the stage of final disposal of the petition.

13. All concerned to act on the basis of an authenticated copy of this order.

(M.S. SONAK, J.)