

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

WRIT PETITION NO. 9742 OF 2013

Lalit Bhabhda

... Petitioner

Vs

Kavita Lalit Bhabhda

... Respondent

...

Ms. Seema Sarnaik for the petitioner.

CORAM : M. S. SONAK, J.

DATE : 20 AUGUST, 2016

P.C. :

1. The challenge in this petition is to the order dated 22nd January 2013 made by the Family Court at Bandra awarding maintenance to the respondent-wife at the rate of Rs.15,000/- and Rs.10,000/- per month to the daughter as an interim measure, pending the final disposal of Petition A-1035/2010 instituted by the respondent-wife.

2. In terms of the impugned order, the payment of interim maintenance was to take effect from the date of the application, i.e. 10th February 2011.

3. This Court on 2nd December 2015 made a following order :

- 1] *Not on board. Upon production, taken on board.*
- 2] *Subject to the Petitioner clearing the arrears of maintenance in respect of daughter Bhavna at the rate of Rs.10,000/- per month from the date of application, i.e.,*

10 February 2011, it is directed that the Family Court shall not strike of the Petitioner's defence. This means that if on or before 10 December 2015, which is the date fixed by the Family Court, the Petitioner pays the maintenance amount in respect of the maintenance claim of Bhavna, in terms of the order impugned in this petition, the Family Court shall not strike of the defence of the Petitioner. If, however, the Petitioner commits a default, the Family Court shall be at liberty to strike of the defence of the Petitioner on 10 December 2015. The amounts of arrears to be cleared on or before 10 December 2015.

- 3] The learned counsel for the Petitioner has already made a statement that amount towards maintenance in respect of wife and daughter Bhavna are being paid and shall be continued to be paid in terms of the impugned order dated 22 January 2013, from the date of order, i.e., 22 January 2013. This statement is accepted. Place this matter for further consideration on 18 December 2015, on the supplementary board.*
- 4] Issue notice to the Respondent, returnable on 18 December 2015.*

4. Further, on 18th December 2015, Rule was issued in this petition and the following order was made.

- 1] Rule. Mr. Sharma waives notice on Rule for the respondent.*
- 2] There shall be a stay on the recovery of arrears of maintenance, in so far as the respondent – wife is concerned. In so far as the daughter is concerned, the petitioner has already complied with the order for payment of maintenance.*
- 3] Liberty to the parties to file affidavits to bring on record subsequent developments in the matter.*

5. The effect of the aforesaid interim orders were that the award/recovery of maintenance for the period between 10th February 2011

and 22nd January 2013 was stayed pending the final disposal of this petition.

6. Mrs. Seema Sarnaik, the learned counsel for the petitioner has made a statement that in compliance with the aforesaid orders, interim maintenance to the wife and to the daughter has in fact been paid except interim maintenance for the period which is covered by the interim orders made by this Court on 2nd December 2015 and 18th December 2015 and that too, in respect of the interim maintenance awarded to the respondent-wife.

7. Mrs. Sarnaik has today placed on record the order dated 11th December 2015 made by the Family Court at Bandra permitting the respondent-wife to withdraw the Petition No. A-1035/2010. Such withdrawal was on the basis of the application for withdrawal made by the respondent-wife. That the order dated 11th December 2015 and application for withdrawal of the petition, are taken on record and marked as “X” for the purpose of identification.

8. In view of the withdrawal of main Petition No. A-1035/2010, technically speaking the order of interim maintenance no longer survives. However, whatever amounts that have been paid by the petitioner in

pursuance of the orders of interim maintenance, obviously, cannot be recovered. Mrs. Sarnaik, on the basis of instructions from the petitioner also states that no recoveries will be applied for. This statement is accepted.

9. The main contention in the Writ Petition was that the petitioner should not be made to pay interim maintenance from the date of the application i.e. from 10th February 2011 till the disposal of the application i.e. on 22nd January 2013 because the petitioner was in no manner responsible for the delay in disposal of the application. In fact, it is contended that it is the respondent-wife who was responsible for such delay.

10. At this stage, there is no necessity to go into this issue in greater details. This is because the respondent wife has chosen to withdraw the main Petition No. A-1035/2010. In such circumstances, it will not be appropriate for the respondent-wife to insist on recovery of interim maintenance for the period between 10th February 2011 and 22nd January 2013. Interim orders are usually made in aid of the final relief. In this case, since the respondent-wife has chosen to withdraw the main proceedings and has not pressed for the final reliefs, at this stage, the

respondent-wife cannot be permitted for recovery of the interim maintenance for the period between 10th February 2011 and 22nd January 2013.

11. Accordingly, the award of interim maintenance by the impugned order for the period between 10th February 2011 and 22nd January 2013, in so far as the respondent-wife is concerned is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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

(M. S. SONAK, J.)