

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

WRIT PETITION NO.9802 OF 2014

Dr. Mrs. Anita Randhir Patil]
Aged 36 years, Occ : Doctor,]
R/o – Pune City Advanced]
Dental Clinic, Shop No.2 in]
Dahanukar Circle, Next to]
Metro Chemist, Dahanukar]
Colony, Kothrud, Pune]..... **Petitioner.**

Versus

Dr. Mr. Randhir Bharat Patil]
Aged 40 years, Occ : Service/]
Agriculture, R/o – Yedrav]
Tal. Mangalwedho, Dist. Solapur.]..... **Respondent.**

**Mr. Manoj G Patil a/w Mr. A P pawar and Mr. Shambhaji Gaikwad for the
Petitioner.**
Mr. Rahul S Kadam for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 28th November 2016

ORAL JUDGMENT

1 Rule, considering the nature of the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 13/05/2014 passed by the learned Judge of the Family Court No.2, Pune by which order, the Application filed by the Petitioner herein under Sections 24 and 26 of the Hindu Marriage Act, 1955 came to be partly allowed to the

extent of granting maintenance to the minor daughter Anushka from the date of the Application i.e. 08/06/2012 and rejecting the Application in so far as the Petitioner herein is concerned.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Application in question was filed under Sections 24 and 26 of the Hindu Marriage Act. It is the case of the Petitioner wife that the daughter Anushka is residing with her and that the Petitioner herein is maintaining herself and the daughter. It is the case of the Petitioner herein that the Respondent husband without any reason has deserted the Petitioner and the daughter Anushka. It is the case of the Petitioner that the Respondent owns 70 Acres of irrigated land at village Yedrav, Taluka Mangalvedha, District Solapur. It is her case that the Respondent earns an amount of Rs.1,50,000/- to Rs.2,00,000/- per month from the said agricultural land. It is her case that the Respondent by profession is a veterinary doctor and earns Rs.50,000/- per month from his practice. It is her case that the Respondent comes from a well to do family. The father of the Respondent is a retired army officer whereas his brother is a doctor by profession. It was therefore the case of the Petitioner that she requires Rs.35,000/- per month towards her and daughter's maintenance.

4 The Respondent husband filed his reply and a counter claim for

maintenance. It was the case of the Respondent that in the year 2004 he met with an accident and he was bed ridden for two years since 2004. It is his case that the Petitioner is capable of maintaining herself from her own income. It is his case that he owns only 5 acres of agricultural land from which he is not earning anything due to scarcity of water.

5 The Petitioner herein i.e. the wife filed her reply to the counter claim. In the said reply she averred that she has to incur educational expenses to the tune of Rs.1,60,000/- per year for the daughter. It is her case that she is a Dentist by profession and for starting her clinic she has taken loan from State Bank of India and she is repaying her loan.

6 On behalf of the parties submissions were made asserting their respective positions as reflected by the pleadings.

7 The Family Court having regard to the material on record especially having regard to the fact that the Petitioner herein is a Dentist and running her clinic at Kothrud, Pune concluded that she has sufficient income to maintain herself and that she would not be entitled to claim maintenance from her husband. In so far as the Respondent husband is concerned, the Family Court observed that he has not produced anything on record to disclose his own income and therefore he has concealed his income from the Court. The

Family Court observed that from the record it is obvious that the Respondent has a source of income. The Family Court further observed that having regard to the well settled principles namely that when both parents have income, it is their joint responsibility to contribute towards maintenance of their children in proportion to their income. The Family Court adverted to the fact that the husband has not denied the school fees receipts as also the receipts of the other expenses of the daughter. Having regard to the said expenses the Family Court deemed it appropriate to fix the maintenance for the daughter at Rs.5,000/- per month and as indicated above rejected the application in so far as the Petitioner herein i.e. the wife is concerned. As indicated above it is the said order dated 13/05/2014 which is taken exception to by way of the above Writ Petition.

8 It was the submission of the learned counsel for the Petitioner herein that daughter Anushka goes to a renowned school in Pune i.e. St. Helena's High School in the Cantonment Area, Pune. The learned counsel for the Petitioner has drawn this Court's attention to the expenses that the Petitioner wife has to incur in the matter of payment of fees and payment for other facilities which are provided by the school. A perusal of the list produced by the learned counsel appearing for the Petitioner wife indicates that the school fees themselves are to the tune of Rs.42,500/- per annum and the other expenses towards school uniform, books & stationary, transportation, school

activities like gatherings and picnics are also substantial. The daughter Anushka has to also attend various other extra curricular activities like swimming, karate, badminton, drawings/art and music classes for which activities also the Petitioner wife has to incur substantial expenses.

9 Per contra, the learned counsel appearing on behalf of the Respondent herein i.e. the husband would contend that the Respondent husband though accepted the fact that the daughter Anushka is going to one of the renown schools in Pune, the Respondent husband does not have the financial wherewithal to further contribute towards the said expenses. The learned counsel for the Respondent would contend that except agricultural activities carried out by the Respondent, the Respondent is not doing anything-else.

10 Having heard the learned counsel for the parties, and having perused the material on record, in my view, the maintenance fixed at Rs.5,000/- per month is required to be enhanced so that daughter Anushka can avail of the same standard of living which she was availing when her parents were together. As indicated above, the school fees themselves are in the range of Rs.42,500/- per annum. The other expenses are also substantial. It would have to be borne in mind that daughter Anushka is now a teenager and would like to take part in activities which the other teenagers are fond of. For the

activities which are provided by the school the same have to be obviously paid for. Hence at a rough estimate the expenses which would be entailed would be about Rs.2,00,000/- per annum. This is only in respect of the school. The daughter Anushka would obviously have to be provided with clothing etc which clothing would have to be of the nature the teenagers are fond of and for the same obviously the Petitioner wife would have to incur expenses. In my view, therefore, proceeding on the basis that the expenses have to be shared between the spouses, it would be just and proper to enhance the maintenance by Rs.7,500/- per month making a total of Rs.12,500/- per month to be paid by the Respondent husband. this would result in the monthly expenses of approximately Rs.25,000/- being shared equally by the Petitioner wife and the Respondent husband. Since the amount is to go towards the maintenance of daughter Anushka, the Respondent husband can obviously have no grievance about the same. The amount of Rs.5,000/- per month which has been mentioned in the impugned order would accordingly stand substituted by the amount of Rs.12,500/- per month being payable by the Respondent husband. This Court hopes and trusts that the Respondent husband in all fairness would accept the amount fixed by the Family Court as modified by this Court and would not precipitate the matter further. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]