

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2371 OF 2016**

**Mrs. (Dr) Shahnaz Shrikant Tendulkar
@ Shahnaz Amit Wadke**

..Petitioner

Vs.

Dr. Amit Pradip Wadke

..Respondent

**Mr. Nitin Gangal for the Petitioner
Mr. R. M. Haridas for the Respondent**

**CORAM : R. M. SAVANT, J.
DATE : 15th APRIL, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 16-2-2013 passed by the Learned Judge of the Family Court No.3, Mumbai by which order, the application Exhibit 37 filed for interim maintenance came to be allowed to the extent of granting interim maintenance to the child Aaron in the sum of Rs.10,000/- but the application for interim maintenance in so far as the Petitioner is concerned came to be rejected.

2 On behalf of the Respondent a preliminary objection is raised as regards the maintainability of the above Petition. Firstly on the ground that in paragraph 11 it has been stated that an application for enhancement of the interim maintenance in respect of the son Aaron has been filed on 15-8-2015 which is pending and therefore this Petition may not be entertained. The

second objection is on the ground that the order passed as long back as on 16-2-2013 is sought to be challenged by way of the above Petition filed on 23-9-2015 and hence the Petitioner is deemed to have acquiesced in the said order dated 16-2-2013 and that the challenge now is an after thought and a counter blast to the Writ Petition filed by the Respondent being Writ Petition No.2848 of 2015.

3 In so far as the first objection is concerned, there is merit in the said contention raising the said objection, the Petitioner having filed an application for enhancement of interim compensation to the son Aaron which would require going into some factual aspects. This court need not consider the enhancement sought on the ground of the son Aaron.

4 In so far as the second objection is concerned, it is required to be noted that by the impugned order the interim maintenance to the Petitioner has been refused. If the Petitioner was really aggrieved by the same and that if the said order was operating to the prejudice of the Petitioner, the Petitioner would have challenged it with reasonable despatch. The reason mentioned in paragraph (13) of the Petition can hardly justify the long time lag between 16-2-2013 to 23-9-2015 when the above Petition was filed. In fact by the averment made in the said paragraph (13) the Petitioner has disclosed that it is only after notice in the said Writ Petition No.2848 of 2015 was received and

the vakalatnama was to be filed, that a decision was taken to file the above Writ Petition challenging the impugned order dated 16-2-2013.

5 In my view the contention of the Learned Counsel for the Respondent is required to be accepted and the Petition is required to be dismissed on the ground of the Petitioner having acquiesced in the said order dated 16-2-2013 as also on the ground that the filing of the above Petition is merely an afterthought and a counter blast to the Petition filed by the Respondent.

6 However, since the matter involves the maintenance claimed by the Petitioner which has been rejected by the Trial Court i.e. the Learned Judge of the Family Court, this Court ventured to consider the above Petition on merits. The application for maintenance Exhibit 37 was heard along with other two applications being Exhibits 38 and 43 which were for access etc. In so far as the application Exhibit 37 is concerned, the Trial Court i.e. the Learned Judge of the Family Court, has adverted to the fact that the Petitioner is a Bachelor of Dental Surgery (BDS) and also has super specialization in Pediatric Dentistry. The Trial Court has adverted to the fact that the Petitioner had already filed an application claiming interim monetary compensation under the Domestic Violence Act and has therefore deemed it appropriate to reject the application for maintenance filed by the Petitioner but has granted

maintenance of Rs.10,000/- on account of the son – Aaron.

7 In so far as the Petitioner is concerned, it is required to be noted that her application filed under Domestic Violence Act for interim monetary compensation has been allowed and that she has been granted Rs.10,000/- as interim monetary compensation by the Learned Additional Chief Metropolitan Magistrate which order has been confirmed by the Learned Sessions Judge which order have now been confirmed by this Court by dismissing the said Writ Petition No.2848 of 2013 filed by the Respondent-husband. Hence even on merits, the order passed by the Learned Judge of the Family Court denying the maintenance to the Petitioner does not merit any interference at the hands of this Court in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

8 However, the application for enhancement of the maintenance of son Aaron is directed to be disposed of expeditiously by the Learned Judge of the Family Court and not later than 30-8-2016.

[R.M.SAVANT, J]