

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10406 OF 2015

Meenakshi Prashant Kshirsagar .. Petitioner
vs.
Prashant Tukaram Kshirsagar & Anr. .. Respondents

Mr. P. M. Bopardikar for Petitioner.
Mr. Prashant Kshirsagar – Respondent No. 1 present in person.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 29 January 2016

Date of Pronouncing the Judgment : 03 February 2016

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsel for the petitioner and the respondent no. 1, who appears in person, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 7 September 2015, by which the Family Court, Pune has directed the petitioner wife to pay to the respondent husband interim maintenance at the rate of Rs.3,000/- per month from the date of application i.e. 27 August 2004 till end of December 2006; interim maintenance at the rate of Rs.4,000/- per month from January 2007 till December 2008; interim maintenance at the rate of Rs.5,000/- per month from January 2009 to October 2010; and interim

maintenance at the rate of Rs.3,000/- per month from November 2010 till the final disposal of the Petition No. A-199 of 2002 instituted by the petitioner wife against the respondent husband, seeking divorce, on grounds of cruelty. On 19 October 2015, ad interim relief was granted in terms of prayer clauses (b) and (c) subject to the petitioner depositing before the Family Court 50% of the amount directed to be paid as maintenance in terms of the impugned order dated 7 September 2015. By order dated 18 December 2015, the respondent was permitted to withdraw an amount of Rs.1,00,000/-, without prejudice to the rights and contentions of the parties.

3] Mr. P. M. Bopardikar, the learned counsel for the petitioner has submitted that the Family Court has failed to appreciate that the petitioner is presently unemployed. He submitted that in the past, even though, the petitioner has attempted to serve at several places, on account of the cruelty and harassment inflicted by the respondent, including by way of filing a complaint against one of her employers, the petitioner has not been in a position to take up regular employment. The learned counsel pointed out that even the petitioner is required to maintain her old aged parents and her younger unemployed brother. He pointed out that the parties were married in the year 2000 but there was *de facto* separation in the

year 2001. The suit for divorce was instituted in the year 2002. The respondent husband claims that he suffered an accident in the year 2004, however, there are neither police records nor proper medical records in support of such claim. In the year 2007, in fact, exparte decree of divorce was granted to the petitioner. In the year 2010, however, the exparte decree was set aside and the matter is pending adjudication. Considering all these circumstances, the learned counsel for the petitioner submitted that there was no case made out to require the petitioner to pay maintenance to the respondent husband.

4] Mr. Bopardikar, the learned counsel for the petitioner further pointed out that the respondent husband claims to have a degree in Computer Science and further, there is material on record that the respondent owns premises, from which, the respondent takes up a computer classes. The learned counsel has pointed out that even if it is assumed that the respondent husband suffers from certain physical disabilities, such disabilities in no manner prevent the respondent husband from earning a decent income by way of taking computer classes or tuitions, for which, he is substantially fit. Mr. Bopardikar submitted that the respondent husband is bent upon evoking sympathy and by such means, extorting maintenance from the petitioner wife. The learned counsel submitted that the

respondent has placed on record no material with regard to any efforts made by him in the context of the employment and earning of some income. The learned counsel submitted that instead the respondent husband is interested in making reckless allegations against the petitioner wife and extorting maintenance from the petitioner wife. The learned counsel for the petitioner attacked the medical records relied upon by the respondent husband, by placing reliance upon other material record to suggest that the respondent husband is neither advised any bed rest nor is he incapable of employment. The learned counsel submitted that even the quantum of maintenance is quite disproportionate. In determining the quantum, the Family Court has not had regard to the income of the petitioner, who is presently unemployed, her needs, the needs of her family members whom she is duty bound to maintain as well as income and the earning capacity of the respondent husband. For all these reasons, the learned counsel for the petitioner submitted that the impugned order is liable to be set aside.

5] Mr. Prashant Kshirsagar, has appeared in person. He has tendered a compilation of documents, which is quite exhaustive. He has made his submissions quite admirably, seated in his wheel chair. It is quite evident that the respondent husband is well versed with the intricacies of this case and the legal procedures related therewith.

6] Mr. Kshirsagar has submitted that in the year 2004 he met with an accident and since then, he is not in a position to work. He submitted that the premises to which the petitioner eludes, belongs to his mother and in any case, the premises are quite small. He submitted that some time he was taking up computer classes from out of the suit premises. However, he submits that presently, he is not in a position to take such classes on account of his physical condition as also the circumstance that the knowledge held by him in this area, is by now quite outdated. He cast serious doubts upon the medical records produced by the petitioner wife. He submits that even now, he is required to take bed rest and only with the special permission of his doctor he can attend Court proceedings. He submitted that he has no income of his own. In contrast, he pointed out that the petitioner is a well qualified professional, who has served with several companies. Besides, he pointed out that the petitioner is involved with a theater and therefore, has income from this field as well. For all these reasons, Mr. Kshirsagar submitted that there is no case made out to interfere with the impugned order.

7] Rival contentions now fall for my determination.

8] At the outset, there is no basis to accept the contention of the learned counsel for the petitioner that the respondent husband had

never met with any accident and that from the year 2004, the respondent husband is merely faking a disability for the sole purposes of extorting maintenance from the petitioner wife. The learned counsel for the petitioner has placed reliance upon letter addressed to one of the police station seeking information with regard to the accident and the response thereto. At this interim stage, it is not possible to rely almost entirely upon such material. This is because there are medical records produced, contemporaneous with the date of the alleged accident, which do indicate that the respondent husband did meet with accident and was required to avail treatment. Therefore, there is no reason to interfere with the *prima facie* finding recorded in the impugned order on the aspect of accident.

9] However, even according to the respondent, the accident took place in the year 2004. From the medical records upon which, the respondent husband has placed reliance, it cannot be said that the respondent husband is totally disabled from doing any work or that he has to only take bed rest. The respondent husband, does appear to have exaggerated his position and such exaggeration might have nexus with the claim for maintenance which he has made against the petitioner wife. The medical evidence on record, no doubt, describes the petitioner's physical condition. There is also a

disability certificate produced by the respondent husband from the State of Maharashtra which certifies that the respondent husband is physically impaired, the diagnosis, being '*A V N Left Lower Limb*'. The percentage of disability indicated is 51%. The condition is stated to be permanent, non progressive but not likely to improve.

10] The respondent husband has also produced on record some certificates issued from time to time from Anjali Hospital & Research Center. These certificates, make reference to ailments with which the respondent husband is said to be afflicted. These certificates, hardly inspire any confidence. On the one hand, these certificates advise strict bed rest but at the same time allow the respondent husband to attend Court for hour in two weeks with doctor's permission and advise. These certificates are quite guarded and create an impression that the same were issued for the sole purpose of assisting the respondent husband in his Court proceedings against his wife. The record, both in the Family Court as well as in this Court would indicate that the respondent husband has been attending the Court and handling this case, despite the physical disability. As noted earlier, from the manner in which the respondent is handling his case, it does appear that the respondent is well versed in such matters. The certificates, on one hand, exaggerate his medical condition by suggesting that he is advised

strict bed rest if there are episodes of pain in future and on the other hand, the certificates permit the respondent husband to attend the Court proceedings, which the respondent husband has been attending with regularity and quite a zeal. The medical certificates also make reference to certain further treatments which the respondent may have to avail in relation to his condition.

11] The record also reveals that the respondent husband has certain qualifications in the matter of imparting computer education. Mr. Kshirsagar has submitted that he does not have a formal degree, since in the last year, he failed to clear some subjects. However that did not deter Mr. Kshirsagar from taking computer classes in the past. Mr. Kshirsagar also has premises, which he says, belong to his mother. Nevertheless the record indicates that such premises are available to Mr. Kshirsagar for renewing the activity which he was undertaking earlier, in case, such activities are not already continuing as urged by the learned counsel for the petitioner. Mr. Kshirsagar is no doubt entitled to have his case evaluated with sensitivity, particularly considering his physical impairment . However, it must also be noted that there is no need to encourage Mr. Kshirsagar's conviction, that he is not at all obliged to make any efforts to earn any income and that it is the unconditional duty of his wife to go on providing with maintenance.

From the tenor of Mr. Kshirsagar's submissions, it did appear that Mr. Kshirsagar entertains a conviction of this nature. Mr. Kshirsagar has taken pains to collect several documents and has indulged in lengthy pleadings to justify his claim for maintenance. It does appear that if Mr. Kshirsagar were to put in even half efforts in earning some reasonable income, certainly, Mr. Kshirsagar would be successful in this regard. From the physical condition of Mr. Kshirsagar, it does appear that Mr. Kshirsagar is in a position to undertake suitable employment and earn, at least for his own maintenance. But at the same time, the material on record indicates that the respondent is not interested in doing so.

12] The record also indicates that the petitioner and the respondent lived together as husband and wife for the period of hardly one year. Thereafter, they were separated and within two years from the date of marriage, the petitioner wife has instituted proceedings for divorce. There is also some material which indicates that at least on one occasion, the respondent along with his mother visited the place where the petitioner was employed, created some scene and finally lodged police complaints. In the records relating to several jobs which the petitioner has changed, the petitioner has no doubt, stated that the change of job is due to '*better prospects*'. However, at least at the interim stage, the

contention raised by the petitioner that she was constrained to change jobs or to finally give up employment for reasons attributable to the respondent husband, cannot be ruled out. This is important because the respondent husband insists that the entire responsibility for maintaining him is upon the petitioner wife.

13] From the material on record, both the parties, have taken extreme positions. The petitioner, at least, presently, has taken up a extreme stand that she is unemployed and earns nothing. On the other hand, the respondent, by pointing out to his physical impairment, has taken the same stand with the further addition that he is incapable of earning anything even in the near future. There does not appear to be truth, in each of the extreme stands adopted by the parties. The petitioner is a qualified professional, who has at least in the past, taken up several important jobs. The petitioner, is also involved in theater, though, it is not quite clear as to whether she earns anything substantial in this field. It is however not possible to accept that the petitioner is totally unemployed and has no income whatsoever. At the same time, it is also not possible to accept that the respondent is in no position to earn anything at all for his own maintenance. Despite, the physical impairment, the respondent does have the earning capacity, particularly, by way of taking computer classes or tuitions. The respondent fortunately has some premises, from where he can take up such classes. The

physical condition of the respondent is certainly not such as to disable him from taking up any employment. The respondent also appears to have the family support.

14] Therefore, upon cumulative consideration of the material on record, interests of justice would be met if the petitioner is directed to pay to the respondent by way of interim maintenance an amount of Rs.2,000/- per month with effect from 27 August 2004 till the final disposal of Petition No. A-199 of 2002. In the impugned order, the Family Court, has no doubt, awarded interim maintenance at different rates for different periods. This exercise, of awarding different rates for different periods is no doubt proper. However, it must be noted that between the year 2004 and 2006, when the respondent had met with an accident, it is possible that the respondent was not in a position to earn anything significant and at the same time was required to bear significant medical expenses. Further, in the later years as the position of the respondent improved, the respondent must have been in a position to earn income and at the same time there was corresponding decrease in medical expenses. As of now, the respondent is certainly in a position to take up suitable employment and the mere circumstance that the respondent is not doing so, does not mean that the respondent is entitled to exorbitant maintenance from the

petitioner.

15] Therefore, considering all these aspects, maintenance at the rate of Rs.2,000/- per month with effect from 27 August 2004 till the disposal of Petition No. A -199 of 2002 is hereby awarded. The impugned order is therefore modified. The petitioner is directed to pay interim maintenance at the rate of Rs.2,000/- per month with effect from 27 August 2004 to the respondent till the final disposal of Petition No. A-199 of 2002. The respondent has already withdrawn an amount of Rs.1,00,000/-. If there are any further arrears, the petitioner to clear the same within a period of four weeks from today. However, if there are no arrears and the respondent has received any excess amount, then, the respondent need not repay the said amount to the petitioner. The petitioner shall be entitled to withdraw the portion of the amount deposited by her before the Family Court, in case, the same is in excess of the awarded amount. Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

16] There are directions issued for expeditious disposal of Petition No. A-199 of 2002. The same are reiterated. However, it is made clear that in finally disposing of the said petition, the Family Court need not be influenced by any observations made in the impugned order dated 7 September 2015 or for that matter the

present order. The observations are only *prima facie* and in the context of deciding the application seeking interim maintenance. All contentions of all parties are left open for determination on merits by the Family Court.

17] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka