

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11569 OF 2015

Bhimrao S. Bhore .. Petitioner
vs.
Sheetal B. Bhore .. Respondent

Mr. M.B. Deshmukh for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 15 JANUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 29 July 2015 made by the Joint Civil Judge, Senior Division, Sangli, awarding interim maintenance at the rate of Rs.6000/- per month to the Petitioner's wife and two minor children studying in IVth and VIth Standard respectively.

2] Mr. Deshmukh, learned counsel for the Petitioner, has submitted that in terms of compromise entered into between the Petitioner and the Respondent in proceedings under Section 125 of Cr.PC., the Petitioner is paying maintenance of Rs.2400/- per month to his wife and children. He submits that such payment has not at all been taken into consideration by the Trial Court, whilst awarding maintenance of Rs.6000/-. He submits that this constitutes breach of the law laid down by this Court in ***Criminal Writ Petition No. 352 of 2002 (Pushpa alias Chahabai Bhausaheb Gade and anr. Vs. Bhausaheb R. Gade)*** decided on 19 September 2008 and the law laid down by the Hon'ble Supreme Court in case of ***Sudeep Chaudhary Vs. Radha Chaudhary – 1997 (11) SCC 286***. Mr.Deshmukh further submitted that the Petitioner draws net salary

of hardly Rs.22,816/- and since the Petitioner has availed a loan of Rs.4 Lacs in order to tend the injuries sustained by him in the year 2003, an amount of Rs.9400/- is deducted from out of such net salary. Mr. Deshmukh submits that in such circumstances, the requirement to pay maintenance of almost Rs.8400/- to the wife and children is excessive and therefore, unsustainable.

3] Having heard learned counsel for the Petitioner and perused the record, in my judgment, no case is made out to interfere with the impugned order by which interim maintenance has been directed. Perusal of the impugned order would indicate that the Trial Court has taken into consideration the amount of Rs.2400/- per month, which the Petitioner pays to the Respondent, in pursuance of compromise in the proceedings under Section 125 of Cr.P.C. The two decisions, upon which reliance was placed by Mr. Deshmukh state that the proceedings under Section 125 of Cr.P.C. are summary in nature. Therefore, the amount determined therein is tentative in nature and the same is always subject to final determination in the civil proceedings. In this case, by the impugned order, only an interim determination has been made. Further, the Trial Court, instead of awarding maintenance of Rs. 8400/-, has awarded maintenance of Rs.6000/- upon taking into consideration the circumstance that the Petitioner is paying maintenance of Rs.2400/- in terms of the compromise. Accordingly, at least at this interim stage, it cannot be said that there is any jurisdictional error in making of impugned order.

4] The Trial Court has noted that net pay of the Petitioner is around Rs.23,000/- per month., Even assuming that Rs.9400/- is required to be deducted towards loan amount, it cannot be said that the amount of maintenance awarded is grossly excessive. At least, at this stage, it is not possible to accept the Petitioner's contention that that this loan was necessary for the purposes of treatment of an injury, which is stated to have occurred some time in the year 2003. Accordingly, there is no case made out to interfere with the impugned order.

5] It is however, directed that the Trial Court, whilst disposing of the main petition finally, will not permit itself to be influenced either by the observations in the impugned order or the observations in the present order. The Trial Court to dispose of the petition finally on the basis of material before it, as may be tendered by the parties in the course of evidence.

6] With the aforesaid observations, this petition is dismissed. There shall, however, be no order as to costs .

(M. S. SONAK, J.)