

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

WRIT PETITION NO. 11653 OF 2012

Bosco Thomas Dennis D'Lima	... Petitioner
V/s.	
Sheila Wendy D'Lima	... Respondent

Mr. Bazil Menezes i/b Mini Mathew for the Petitioner.
Mr. Khushnood Akhtar a/w Rehan Ansari a/w Pinny Pathak a/w
Pradhya Meshram for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 06/10/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner husband challenges order dated 18.08.2012 passed by the Judge, Family Court No.3, Mumbai below Exh. 14 in interim application No. 76 of 2012 in Petition A-1953 of 2011 directing petitioner husband to pay sum of Rs.7,000/- per month to the Respondent wife and Rs.5000/- per month to the child Christine.

3 In the present proceeding, the petitioner filed Divorce Petition No. A-1953 of 2011 in the Family Court at Bandra for following reliefs.

“a) This Hon'ble Court be pleased to dissolve the Petitioner's marriage with the Respondent, solemnized on 09.04.2005, under the Christian Marriage Act 1872 by the Parish priest at Holy cross Church Elphinstone, under the provisions of Sec. 10 (1)(x) of the Divorce Act, 1869 as amended the Divorce (Amendment) Act, 2001.

b) This Hon'ble Court be pleased to order and direct the Respondent to allow the Petitioner to visit, see and take Christine, the Petitioner's daughter; out, once in a week during normal hours or any other special day on advance intimation.

c) This Hon'ble Court be pleased to order and direct the Respondent to hand over the ornaments, household articles and as mentioned in Exh-E annexed with the Petition to the Petitioner.

d) The Respondent be ordered and directed to return to the Petitioner a sum of Rs.4,00,000/- which was given / transferred by the Petitioner, to the Respondent for the purpose of investment when the petitioner was abroad.

e) The Respondent be ordered and directed to pay and or return to the Petitioner a sum of at about Rs.1,00,000/- which was given by the Petitioner for purchasing to the Respondent for the purpose of the certificates purchased by the Petitioner and the Respondent jointly/or the investments made in 26.09.2005 in Kisan Vikas Patra 8 ½ year under plan "Joint B" with the Kalbadevi Post Office Head quarters, Mumbai – 400 002.

f) Pending the hearing and final disposal of the Petition, the Respondent be ordered and directed to hand over the possession of the personal documents as mentioned in Exh.E annexed with the Petition, to the Petitioner.

g) Pending the hearing and final disposal of the Petition, the Respondent be ordered and directed to hand over the possession of the ornaments and household articles as mentioned in Exh.-E annexed with the Petition, to this Hon'ble Court.

Or

Pending the hearing and final disposal of the Petition the Respondent be ordered and directed to give the undertaking to the Hon'ble Court that the Respondent shall keep all the ornaments, household articles as mentioned in Exh.E annexed with the Petition, in good condition with utmost care and without loss and/or damage.

h. Pending the hearing and final disposal of the Petition, the Respondents, her agents or any person claiming through her, be restrained by an order and injunction of this Hon'ble Court from surrendering the certificates purchased by

the Petitioner and the Respondent jointly / or the investments made in 26.09.2005 in Kisan Vikas Patra 8 ½ year under plan “Joint B” with the Kalbadevi Post Office Head quarters, Mumbai – 400 002.

OR

Pending the hearing and final disposal of the petition the Post Master Kalbadevi Post Office Head Quarters, Mumbai - 400 002 and/or the officers/ servants / subordinates attached to the post office be restrained by an order and injunction of this Hon'ble Court from paying/ release any money on surrendering the Kisan Vikas Patra 8 ½ year under plan “Joint B” certificates purchased by the petitioner and the Respondent jointly on 26.09.2005.

*I) For interim and ad-interim reliefs in terms of prayer (f), (g) and (h) above.
j) For cost of the Petition be provided for,
k) For cost of the Petition be provided for,
j) For such other and further reliefs as this Hon'ble Court may deem fit be granted.”*

4 In the husband's petition, the wife preferred application for interim maintenance on 06.03.2012 claiming sum of Rs.20,000/- per month for herself and Rs.15,000/- for her daughter by way of maintenance. In the said application, the Respondent wife in paragraph 4 stated that she is working with “Prafula” and used to get salary of Rs.6,000/- per month. She submits in her application that the same was absolutely insufficient for her maintenance as well as her minor child. In the said application, the Respondent stated that petitioner has worked in Qatar for one and half years and he has enough money in the Bank. He was drawing salary of 9016 Qatar Riyals, which is equivalent to more than Rs.1,26,000/- approximately. She further stated in that application that after coming back to India, the petitioner employed. On the basis of this fact, the Respondent wife claimed maintenance @ Rs.25,000/- per month for herself and

Rs.15,000/- per month for her daughter. That application was strongly opposed by the petitioner husband. After hearing both the sides the Family Court by way of interim maintenance passed the impugned order dated 18.08.2012 directing petitioner to pay sum of Rs.7,000/- per month to the wife and Rs.5,000/- per month to the daughter. Same is challenged by the petitioner husband before this court.

5 The learned counsel for the petitioner filed additional affidavit dated 06.10.2016. He submits that the trial court erred in coming to the conclusion that Respondent wife is entitled to maintenance @ Rs.7,000/- per month and Rs.5,000/- per month to the daughter. He submits that he worked in Qatar only for one and half years. Thereafter, he returned to the India. At present, he is working with Toyo Computers Pvt. Ltd. He submits that the gross salary of the petitioner for the month of August, 2016 is Rs.17,460/- and net salary Rs.16,000/-. He submits that in the meager salary, he has to maintain himself as well as his parents. He submits that out of Rs.16,000/-, petitioner is paying near about Rs.10,500/- towards the rental charges. He submits that these facts were not considered by the family Court at the time of passing the impugned order. He submits that Delhi High Court in the matter of ***Ritu Raj Kant V/s. Anita, in CM(M) No. 1790 of 2006 and Chief Minister No. 14635/2006 dated 18.09.2008*** held that at the time of fixing quantum of maintenance charges, Court have to consider the income of the husband. He submits that in the case in hand the petitioner is earning net salary of Rs.16,000/- only and in spite of that the Family Court directed petitioner to pay sum of Rs.12,000/- to the Respondent wife, which is against well settled

Principle of Law.

6 The learned counsel for the petitioner further submits that Respondent wife is also working and she is getting salary of Rs.6,000/-. She submits that at the time of fixing the maintenance charges, the Family Court has not considered properly the salary of Respondent wife. Hence, the impugned order passed by the Family Court directing the petitioner to pay maintenance of Rs.12,000/- to the Respondent wife and daughter is required to be set aside. He submits that if the said order is not set aside, irreparable loss will be caused to the petitioner.

7 On the other hand, the learned counsel for the respondent wife vehemently opposed the present petition. He submits that the earlier the petitioner was working at Qatar. He had good savings on the basis of salary, which he used to get at Qatar. He submits that petitioner's income is more than Rs.17,000/- which he has shown in his salary certificate. He submits that Respondent is bearing all the expenses of her daughter as of today. He submits that quarterly tuition fee is near about Rs.1,200/- and she has to bare other expenses also. It is not possible for respondent to maintain herself as well as her daughter in the meager salary of Rs.6,000/- which she is getting as of today. He submits that in any case, it is the duty of the petitioner husband to maintain his wife as well as daughter. He further submits that in any case, the impugned order passed by the Family Court at interim stage, the main petition is pending for hearing and final disposal on its own merits. Hence, there is no substance in the present petition and same

to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that the Family Court awarded the maintenance of Rs.12,000/- to the Respondent and her daughter. The daughter is taking education. Therefore, the Respondent has to spend amount on her education as well as day-to-day expenses. The Authority cited by the petitioner in the matter of Ritu Raj Kant (supra) is not applicable to the facts and circumstances of the present case. In any case, this petition is against the interim order passed by the Family Court and as the Respondent is maintaining her daughter who is taking education, I do not find any reason to interfere in a well reasoned order passed by the family Court.

9 Hence, following order is passed:

a) Writ Petition stands rejected.

b) Considering the fact that the Petition No. A-1953 of 2011 is pending for last more than 6 years, the hearing of the said petition is expedited.

c) This Court expects that the Family Court to decide the said matter as early as possible, but in any case on or before 31.03.2017.

d) The Petitioner to clear the outstanding amount of maintenance charges by equal monthly installments within six months from today.

e) If there is any default in monthly installments, the Respondent wife is entitled to take appropriate steps for recovery of the same according to law.

(K.K.TATED, J.)