

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

WRIT PETITION NO. 619 OF 2015

WITH

WRIT PETITION NO. 852 OF 2015

Mahesh Hitesh Parihar

... Petitioner

Vs

Vaishali Mahesh Parihar & Anr.

... Respondents

...

Mr. Anjani Kumar Singh i/b. Mr. Iqbal Ahsan for the Petitioner.

CORAM : M. S. SONAK, J.

DATE :20 AUGUST, 2016

P.C. :

1. Rule in both these petitions.
2. Despite service, the respondent has chosen not to appear in the matter. However, considering the nature of controversy, it would be appropriate if the petitions are finally disposed of.
3. The challenge in Writ Petition No. 852 of 2015 is to the order dated 27th October 2014 made by the Family Court, Bandra, directing the petitioner to pay interest @ 6% per annum on the amount of alimony of Rs.2,00,000/- which was awarded vide judgment and decree dated 31st July 2013. The impugned order also imposes costs of Rs. 5,000/- upon the petitioner.

4. Mr. Anjani Kumar Singh, the learned counsel for the petitioner has submitted that judgment and decree dated 31st July 2013 had made no provision for payment of any interest. The petitioner, who is a chartered accountant by profession, had no intention to resist payment of alimony, otherwise than by resort to the due process of law. Accordingly, the petitioner instituted First Appeal before this Court, in which, the execution of the decree was stayed until further orders. This is clear from the order dated 20th November 2013 made by this Court in the Family Court Appeal No. 169 of 2013 instituted by the petitioner. Ultimately, the said Family Court Appeal was dismissed by this Court on 2nd July 2014. Special Leave Petition instituted by the petitioner was also dismissed on 8th October 2014. Soon thereafter, the petitioner has paid the amount of alimony. In these circumstances, the learned counsel for the petitioner has submitted that the Executing Court has clearly traveled beyond the decree by requiring the petitioner to pay interest @ 6% per annum. Further, the learned counsel for the petitioner submitted that there was absolutely no warrant for imposition of costs of Rs.5,000/- upon the petitioner.

5. There is no dispute with the proposition that the executing court cannot travel beyond the terms of the decree. The decree in the

present case, had directed the petitioner to pay alimony of Rs.2,00,000/- within a period of 1 month from today of the decree dated 31st July 2013. This period expired by 30th August 2013. At least as on the said date, there was no interim relief operating in favour of the petitioner. The ad interim order was ultimately made on 28th November 2013. The appeal in which the ad-interim order was made, was ultimately dismissed on 2nd July 2014. Special Leave Petition was not entertained by the Hon'ble Apex Court on 8th October 2014.

6. Though, the Executing Court is not permitted to travel beyond the terms of the decree, there is yet another principle which requires the party affected by any interim orders, made by the court to be restituted, once, it is found that the main proceeding in which such interim relief came to be granted deserved dismissal. Although, the petitioner was not bound to pay the alimony amount during the course of operation of the ad-interim order, once the main appeal came to be dismissed and the ad-interim order stood vacated, there was no justification on the part of the petitioner for not paying the alimony amount. Further, in such a situation the petitioner was also bound to place the respondent in the same position as she would have been, in case, the petitioner had not obtained any ad-

interim orders in the appeal instituted by him, which has ultimately been dismissed by this Court on 2nd July 2014. Considered from this perspective, this is clearly not a case which warrants interference with the grant of interest @ 6% per annum.

7. The extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India is discretionary. The discretion is required to be exercised in order to promote justice. There is no compulsion to exercise such jurisdiction merely because the petitioner may have made out some legal or hyper technical point. If the award of interest is interfered with, the situation would arise whereby the petitioner would have obtained undue benefit on the basis of ad-interim order obtained by him when, ultimately, the appeal in which such ad-interim order was obtained was found to be merit-less.

8. If the relief granted is found to just and fair, in the facts and circumstances of the case, there is no obligation for a Writ Court to interfere relying upon the general principle that an executing court is barred from traveling beyond the terms of the decree. In the present case it cannot be said that the executing court has really traveled beyond the terms of the decree. The decree, was not satisfied by the petitioner within time

prescribed therein. Between the period from 30th August 2013 and 28th August 2013, despite there being no interim order, the petitioner took the risk of not paying the alimony amount. In such circumstances, the executing court was justified in making the impugned order and imposing costs. The impugned order promotes substantial justice. There is no case made out to interfere with the impugned order. There is neither any jurisdictional error nor any perversity in the impugned order. Writ Petition No. 852 of 2015 is consequently dismissed.

9. The challenge in Writ Petition No. 619 of 2015 is to the order dated 27th October 2014 made by the Family Court Bombay not only dismissing the petitioner's application urging the dismissal of execution proceedings but further, imposing costs of Rs.10,000/- upon the petitioner. Whilst, no fault can be found with the impugned order to the extent it dismisses petitioner's application urging the dismissal of the execution proceedings, the imposition of costs of Rs.10,000/- in the fact and circumstances of the present case cannot be said to be justified. It is true that the petitioner has been resorting to multiple legal process, which include filing appropriate proceedings before this Court as well as the Hon'ble Supreme Court. There can be nothing objectionable in a party

pursuing the legal remedies as may be available to him, unless it is established that such proceedings are vexatious. In such circumstance, the direction for payment of costs of Rs.10,000/- as contained in the impugned order dated 27th October 2014 is hereby set aside.

10. It must be noted to the credit of the petitioner that the petitioner, despite having instituted these petitions, has, without prejudice to the rights and contentions urged in this petition, deposited amount towards interest as well as costs before the Family Court. Now that the award of costs to the extent of Rs.10,000/- by order dated 27th October 2014 is set aside, the petitioner shall be entitled to withdraw the said amount from the Family Court. However, in so far as the amount deposited towards interest as well as costs in pursuance of the order dated 27th October 2014, which is the subject matter of challenge in Writ Petition No. 852 of 2015 is concerned, the respondent-wife shall be entitled to withdraw the said amount unconditionally. The executing court to ascertain whether the decree under execution stands fully executed and thereafter make appropriate orders in the execution proceedings.

11. Rule is therefore discharged in Writ Petition No. 852 of 2015. However, rule is made partly absolute to the extent indicated in Writ

Petition No. 619 of 2015.

12. Considering the fair approach of the petitioner in depositing the amounts towards interest and costs before the Family Court, despite pursuing the present petition, this is clearly not a case for award of any costs.

(M. S. SONAK, J.)