

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1883 OF 2014

Nilesh A. Sawant .. Petitioner
vs.
Mrs. Nisha n. Sawant .. Respondent

Mr. Jagdish Reddy (Aradwad) for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 18 AUGUST 2016.

P.C. :-

1] On 17 April 2014, this Court made the following order:

1 Heard Shri J G Reddy, the learned counsel appearing for the Petitioner.

2 Issue notice to the Respondent, returnable on 16th June 2014. In addition to service of notice through Court, the advocate for the Petitioner shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the Respondent and shall file affidavit of service before the returnable date.

3 It appears that the application for interim maintenance came to be filed on 28/8/2013 and was allowed on the same day. The Trial Court has observed that if the notice is issued to the Petitioner-Husband it would result in delay in adjudicating the application filed by the Respondent-Wife for interim maintenance. The parties are therefore put to notice that the above Writ Petition may be heard and disposed of finally at the stage of admission. The prayer for interim relief would be considered after the notice is served on the Respondent. The Petitioner may pay to the Respondent in the interregnum without prejudice to the rights and contentions of the parties."

2] Mr. Reddy, learned counsel for the petitioner, states that the service has been effected upon the respondent. In these

circumstances, this petition is disposed of finally, even though, the respondent does not appear despite notice.

3] The challenge in this petition is to the ad-interim order dated 28 August 2013, by which, the petitioner was directed to pay maintenance *pendente lite*. The only reason for grant of maintenance *pendente lite ex-parte* was that the issue of notice to the respondent might have delayed the adjudication upon the interim application for maintenance. Mr. Reddy, learned counsel for the petitioner, is right that this was not a proper approach to take in the matter. The application for interim maintenance came to be filed on 28 August 2013 and the impugned order granting *ex-parte* ad-interim maintenance was also made on the same date.

4] By the aforesaid order dated 17 April 2014, the petitioner was not granted any interim relief but rather, directions were issued to the petitioner to pay maintenance *pendente lite* without prejudice to the rights and contentions of the parties. At this stage, Mr. Reddy learned counsel for the petitioner is not quite clear as to whether such payment has in fact been made by the petitioner or not. Further, Mr. Reddy was also not in a position to make a statement as to whether the application for interim maintenance has been heard and disposed of by the trial court.

5] In the aforesaid circumstances, rather than interfere with the impugned order, interests of justice would be served if directions are issued to the trial court to dispose of the application for interim maintenance, if the same is not already disposed of, as expeditiously

as possible and in any case within a period of two months from today. Further, it is made clear that the trial court is not to permit itself to be influenced by the impugned order dated 28 August 2013 but shall decide the issue of interim maintenance, if not already decided, in accordance with law and on basis of material that may be produced on record by the parties.

6] This petition is, accordingly, disposed of with the aforesaid directions. There shall, however, be no order as to costs.

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

(M. S. SONAK, J.)

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