

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.469 OF 2014
WITH
CIVIL APPLICATION NO. 3346 OF 2015

Neeraj Ramprakash Shah	..	Petitioner
VS.		
Nidhi Neeraj Shah	..	Respondent

Mr. Priyal G. Sarda for Petitioner.
Mr. Atul Mahajan for Respondent.

CORAM : M. S. SONAK, J.
DATE: 19th OCTOBER 2016

P.C :

- 1] With the consent of learned counsel of the parties, the main petition is taken up for final disposal.
- 2] The challenge in this petition is to the order dated 25.02.2013 made by the Family Court, Pune, directing the petitioner to pay interim maintenance of Rs.30,000/- to his wife and minor son Aryan.
- 3] Mr. Sarda, learned counsel for the petitioner submits that there is material on record which has established beyond doubt that the respondent wife is a software professional and earns about Rs.85,000/- per month. Mr. Sarda, learned counsel for the petitioner states that this is the present income status. In paragraph 14 of the reply filed by the respondent before the Family Court, she has herself admitted she earns net salary of Rs.54,000/- per month after all deductions and taxes. This reply was filed on 10.09.2012.

4] Mr. Sarda, learned counsel for the petitioner also submits that the petitioner earns basic salary hardly of Rs.29,450/- and net salary is not more than Rs.40,000/- per month after all deductions. He submits that the petitioner has to maintain his aged parents. The petitioner has to pay EMI of Rs.22,000/- towards the apartment which he has purchased. For all these reasons, he submits that interim maintenance of Rs.30,000/- per month is exorbitant and unsupportable on the basis of material on record.

5] Mr. Atul Mahajan, learned counsel for the respondent-wife submits that wife has made true and candid disclosure with regard to her income. At the same time, she has pointed out that Aryan, unfortunately, has certain medical needs and for this, considerable expenses have to be incurred. Further, the learned counsel points out that since respondent wife has to earn for her living, she has to engage the services of her maid in order to take care of the domestic arrangements. He points out that now there is issue of education of Aryan. He points out that the petitioner has not made any arrangement for staying or accommodation of the Aryan. The learned counsel submits that there is no case made out to interfere with the award of interim maintenance. He also points that the evidence in the main proceedings has already commenced and further, despite the order of Family Court as modified by this Court, being not stayed, the petitioner is in arrears of approximately

Rs.3 Lakhs in the matter of payment of interim maintenance. For all these reasons, he submits that the impugned order ought not be interfered.

6] Rival contentions now fall for determination.

7] At the outset, it is to be noted that the impugned order only awards interim maintenance. At the stage when the impugned order was made, the petitioner had not even bothered to file any reply to the application seeking interim maintenance. The submission that the petitioner was out of the country and therefore unable to file reply, hardly inspires much confidence.

8] There is no dispute that Aryan, at the time when the impugned order made in 2013, was three years of age and has certain special medical needs. The respondent, who has acknowledged and disclosed her net income, has made detailed reference to the expenses for taking care of various needs of Aryan. Perusal of paragraphs 15 and 16 of the reply dated 10.09.2012, atleast *prima-facie*, do not indicate that any exaggerated amount have been stated therein. No doubt these are all matters of proof. However, considering the tenor of the reply and the disclosures made therein, no fault can be found with the Family Court in lending *prima-facie* credence to the statements in the reply.

9] In this case, even the petitioner is a computer professional. Although, the petitioner had not bothered to produce any material

before the Family Court at the stage when the impugned order was made, in this Court the petitioner has relied upon certain pay slips. The pay slips relates to the years 2014 and 2015. On the basis of the same, it can be concluded that the petitioner has net salary of Rs.40,000/- to Rs.50,000/- per month. The petitioner, has made no arrangement for the accommodation of the respondent wife and Aryan. There is no material on record to even *prima-facie* establish that the petitioner's parents are entirely dependant upon him. If all these circumstances are taken into consideration then, it will be appropriate if the petitioner is ordered to pay atleast Rs.20,000/- by way of interim maintenance, in substitution of Rs.30,000/- in terms of the order made by the Family Court.

10] This reduction is mainly because the respondent wife is also a computer professional and as per her own admission she was earning about Rs.54,000/- per month or thereabouts when she filed a reply in the year 2012. This amount is likely to have increased by now. The responsibilities of maintaining Aryan is of the petitioner as well as the respondent. The respondent, is already taking care of Aryan's physical and medical needs. In these circumstances, the petitioner, has to contribute substantial finances towards the maintenance of Aryan. Ultimately, what the final amount should be, is a matter to be decided once evidence is led by the parties. There is however no justification on the part of the petitioner to resist

payment of even Rs.20,000/- per month in the present circumstances.

11] Accordingly, the impugned order is modified. The amount of interim maintenance is reduced from Rs.30,000/- to Rs.20,000/- per month. The arrears of maintenance shall be paid by the petitioner to the respondent in three equal monthly installments. The first of such installment shall be paid by the end of this month. In case there is any default in the matter of payment of arrears of maintenance, the Family Court shall be at liberty to take such proceedings as prescribed under the law.

12] In fact, it is made clear that this reduction of interim maintenance from Rs.30,000/- to Rs.20,000/- per month is conditional upon the petitioner clearing the entire arrears within three months from today. In case, there is any default, then this petition shall be deemed to have been dismissed and the petitioner will be liable to pay the maintenance at the rate of Rs.30,000/- per month as directed in the impugned order.

13] The Family Court is requested to expedite the main proceedings and endeavour to dispose of the same within a period of six months from today.

14] It is made clear that the observations in the impugned order or for that matter in the present order are only *prima-facie* for the purpose of determining interim maintenance. The Family Court

need not be influenced by such observations while deciding the main matters on merits.

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

16] CA No.3346/2015 does not survive, since the main matter is disposed of. Civil Application is also disposed of accordingly.

(M. S. SONAK, J.)