

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 321 OF 2016

Mr. Tejas B. Naukudkar .. Petitioner
vs.
Mrs. Urmishta Tejas Naukudkar and anr. .. Respondents

Mr. Abhijit Sarwate a/w. Mr. Nikhil Chavan for the Petitioner.
Mr. Prathamesh Bhargude for the Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 29 January 2016.

Date of Pronouncing the Judgment : 2 February 2016.

JUDGMENT :-

1] The challenge in this petition is to the order dated 1 October 2015 made by the Family Court, Pune awarding interim maintenance of Rs.15000/- per month to the Respondent-wife and Rs.5000/- per month for the minor daughter Anvita from the date of application, i.e., 23 October 2013 till the final disposal of main petition.

2] Mr. Sarwate, learned counsel for the Petitioner, has submitted that even though the Respondents have claimed maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (said Act), the Family Court has purported to exercise jurisdiction under Section 24 of the Hindu Marriage Act, 1955 (Hindu Marriage Act), notwithstanding the circumstance that there is considerable

difference in the scope and parameters of the two provisions. Mr. Sarwate submitted under Section 24 of the Hindu Marriage Act, whilst the conduct of claimant's wife may be irrelevant in order to maintain a claim of maintenance, the position is quite otherwise in proceedings under Section 18 of the said Act. Under the later Act, the claimant's wife has to establish that she is living away from her husband for justifiable reasons. Mr. Sarwate submitted that the impugned order is therefore, vitiated by jurisdictional error and liable to be set aside on the said ground alone.

3] Mr. Sarwate, without prejudice to the aforesaid contention, further submitted that there are several other reasons, which warrants setting aside of the impugned order. In first place, he submitted that the income tax returns filed by the Petitioner indicates that his income is hardly about Rs.18,000/- per month. In such circumstances, the Family Court has erred in awarding maintenance of Rs.20,000/- to the wife and daughter. Secondly, the Family Court has not at all taken into consideration his income and earning capacity of the Respondent-wife. Thirdly, the Family Court has adverted to the wants of the Respondent-wife and daughter, rather than adverting to their needs. Fourthly, there is absolutely no

material to justify the award of maintenance at the rate of Rs.5000/- per month from the minor daughter Anvita, who is presently only pre-schooling. Fifthly, the Family Court has permitted itself to be influenced by the circumstance that the Petitioner has inherited a Mercedes Car from his father. Sixthly, the Family Court has confused between the assets of the Petitioner and Petitioner's family, between which there is considerable variance. For all these reasons, Mr. Sarwate submitted that the impugned order is liable to be set aside.

4] Mr. Prathamesh Bhargude, learned counsel for the Respondents, has submitted that the Petitioner is a businessman and industrialist, having industry '*Delta Enterprises*', at MIDC Chinchwad, Pune. The learned counsel submitted that there is ample material on record to establish the true income assets and lifestyle of the Petitioner. This includes, not just the Mercedes Car, but other cars, apartments, agricultural lands and the business interests. The learned counsel pointed out that the Petitioner's father has since expired. The Petitioner is not required to maintain any other member of his family. The scope of income tax returns has been correctly appreciated by the Family Court. The Respondent-wife is neither earning nor presently has any source of income. The

Respondent-wife is required to take care of the minor daughter. The submission based upon Section 24 of the Hindu Marriage Act is not even raised in the petition. In any case, there is ample material on record, which establishes the reasons why the Respondent-wife has been forced to stay away from the matrimonial home. For all these reasons, learned counsel submitted that there is no case made out to interfere with the impugned order, by which, the interim maintenance has been awarded.

5] Having heard the learned counsel for the parties and perused the material on record, this is not a fit case to interfere with the impugned order. The contention based upon Section 24 of the Hindu Marriage Act, finds no mention even in the memo of petition. It does appear that the reference to Section 24 of the Hindu Marriage Act in the impugned order, is a ministerial error. If the record is perused, apart from a vague statement that the Respondents are not justified in living matrimonial home, it does not appear that any serious issue was joined, at least at the interim stage on this aspect. Even otherwise, if the averments in the pleadings are perused, it cannot be said that no justification has been demonstrated, at least at the interim stage, for the Respondents to stay away from the

matrimonial home and yet claim maintenance. There is really nothing on record to demonstrate that the Petitioner has, at any stage, taken any steps whatsoever, to prevail upon the Respondents to return the matrimonial home. It does appear that the Petitioner is merely trying to take some advantage of ministerial error in the impugned order, by which, there is reference to Section 24 of the Hindu Marriage Act. There is absolutely no merit in the contention and therefore, same is hereby rejected.

6] At the outset, it must be made clear that this Court under Article 226 or 227 of the Constitution of India, is not exercising any appellate jurisdiction. Therefore, it is not possible to reassess the entire material on record, as if, this was some appeal and thereafter, determine whether award of interim maintenance is justified. Unless, some jurisdictional error or perversity is demonstrated, ordinarily it is not for this Court to reassess the material on record, as if, this Court were exercising appellate jurisdiction. It is in the light of these jurisdictional parameters that the submissions of Mr. Sarwate will have to be appreciated.

7] The Family Court has taken cognizance of the income tax returns produced on record by the Petitioner. However, the manner in which the Family Court has dealt with the said returns, cannot, in the facts and circumstances of the present case, be faulted. In case of *Shirish H. Garg Vs. Nidhi S. Garg*¹, this Court has held that the ascertainment of the income has to be done judicially and sensibly and not arbitrarily or only arithmetically. In consideration of income contemplated under these proceedings, cognizance need not be restricted to only the numerical figures shown in the income tax returns nor can such figures be taken for the gospel. The Court is required to take into consideration the attendant circumstances, before, the figures stated in the income tax return are accepted as they stand. Applying such principles, the Family Court has rightly taken cognizance of the attendant circumstances like the Petitioner owning a factory, the Petitioner using the Mercedes Car, the Petitioner or in any case, his family owning flats, agricultural properties, the Petitioner being free of obligation to maintain any other family members and so on. On basis of this assessment, the Family Court has rightly concluded that the Petitioner is very much in a position to pay the interim maintenance, which has been awarded. There is absolutely, no jurisdictional error or perversity

1 2011 (5) Bom. C.R 372

involved in the assessment of the material on record by the Family Court.

8] The Petitioner is unnecessarily trying to create confusion between his father's factory, i.e., '*Delta Engineering Factory*' and his own factory, i.e., '*Delta Enterprises*', relying upon, possibly, some slight imperfection in the phraseology implied in the impugned order. In any case, it is established that the Petitioner's father has since expired. The Petitioner has not been candid to the Court in disclosing the extent of his inheritance, though other circumstances on record suggest that the extent might be considerable. Even if, such inheritance completely ignored, as the Family Court has in fact, ignored, the award of maintenance at the rate of Rs.20,000/- per month is still justified and by no means excessive or contrary to the principles in the matter of award of interim maintenance.

9] The material on record does suggest that the Respondent-wife is a freelance writer. However, there is really no suppression as such on the part of the Respondent-wife. Besides, from the material produced on record by the Petitioner, it does not appear that the Respondent-wife is earning any considerable amounts by resort to

freelance writing. Even if, some reasonable allowance is conceded to the Respondent-wife, taking into consideration the other material on record, award of maintenance at the rate of Rs.20,000/- to the wife and minor daughter, warrants no interference whatsoever. There is no jurisdictional error in the impugned order.

10] The Petitioner claims that the copy of the application seeking interim maintenance was served upon him only on 11 July 2014. In this regard, an endorsement is relied upon, which indicates that the Petitioner obtained the copy on 11 December 2014. There is really no reason to take cognizance of this endorsement. The summons which is a part of the record indicates that the main petition as well as the application for interim maintenance was served upon the Petitioner soon after the petition and application for interim maintenance was lodged and before the returnable date. This means that the application was served upon the Petitioner after 23 October 2013 and before 28 November 2013. There is no record of the Petitioner at any stage complaining about non-receipt of the application. At the belated stage, the Petitioner appears to have applied for the copy and is bent upon taking advantage of this situation. There is no jurisdictional error whatsoever in the award of

interim maintenance from the date of the application i.e., 23 October 2013.

11] The record indicates that the Petitioner's minor daughter is hardly three years old. Even assuming that the Respondent-wife has some earning capacity, some allowance is required to be made to the circumstance that she has to single handedly take care of the minor daughter. The daughter will have to opt for schooling and even this will entail substantial expenditure. Upon over all consideration of all the materials on record, the interim compensation awarded, in the facts and circumstances of the present case, can hardly be described as excessive or disproportionate. From the perusal of the impugned order, the criticism that the Family Court has permitted itself to be swayed by the circumstance that the Petitioner uses and maintains a Mercedes Car, is quite unjustifiable. Nevertheless, since the Petitioner claims that he takes only labour jobs and earns Rs.10,000/- to Rs.13,000/- per month, it was really for the Petitioner to satisfy the Court as to how within this income, he can afford to use and maintain a Mercedes Car, even considering that the same is an inheritance from his father. The Petitioner has been far from candid to the Court. The material on record establishes that the

Petitioner's mother is not dependent upon him. The Petitioner does not appear to have maintain any other persons. All these circumstances have rightly been taken into consideration by the Family Court.

12] The Petitioner has placed reliance upon the decision of this Court in case of *Francis Milton Kevin Noronha Vs. Aloma Ana Gomes*². At the outset, the said decision is in the context of provisions of the personal laws prevalent in the State of Goa. Secondly, the fact situation in the said decision offers no parallel whatsoever to the fact situation in the present case. Thirdly, in this case, considering the award of interim maintenance, the same is clearly upon need basis. Therefore, the decision in the case of *Francis Noronha (supra)* is really of no assistance to the Petitioner.

13] Upon cumulative consideration of the aforesaid facts and circumstances, there is no case made out to interfere with the impugned order. This petition is dismissed with costs of Rs.25000/-. The Family Court to ensure that such costs are indeed paid by the Petitioner to the Respondents within a period of four weeks from today.

2 2009 (2) ALLMR 290

14] The Petitioner is further directed to clear the arrears of interim maintenance and litigation expenses as awarded in the impugned order within a period of four weeks from today. In case, this is not done, the Petitioner is directed to pay interest upon the arrears and litigation expenses, at the rate of 10% per annum from 1 November 2015 till the date of actual payment. This is of course, without prejudice to any other orders, which the Family Court may be entitled to make in the matter of enforcement of the maintenance order.

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

(M. S. SONAK, J.)