

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12795 OF 2015

Dr. Gurpal Singh Saluja .. Petitioner
vs.
Dr. Seema Gurpal S. Saluja .. Respondent

Ms Noorseema M.U. Baig the Petitioner.

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

P.C. :-

1] The challenge in this petition is to the common order dated 27 July 2015 made by the Family Court, No.7, Mumbai below Exhibits-10 and 21 in Petition No. A - 2042 of 2012. By the impugned order, the Family Court has issued the following directions:

“ ORDER

1. *The Applications below Exhs.10 & 21 are partly allowed.*
2. *The respondent shall pay entire educational expenses of minor daughter Asmi, either directly before the school authority or after production of valid receipt, at the hands of petitioner, to petitioner from the date of application I.e, 23.10.2012. to till disposal of petition.*
3. *The petitioner shall give information of school fees, extra curricular activities to respondent well in advance.*
4. *The educational expenses includes school fees, school bus fee, school books, note books, stationery, school trip, extra curricular activities, private tuition fees etc.*
5. *The respondent shall pay an amount of RS.3,000/- per month as a pocket money for the daughter from the date of order to till the date of petition.*
6. *The petitioner shall provide access of their minor Asmi, to respondent on every 1st, 3rd and 5th Saturday in between 3.00 to 5.30 p.m. at Children Complex, Family Court, Mumbai.*
7. *The respondent shall pay cost of Rs.3,000/-.”*

2] Ms Noorseema M. U. Baig, learned counsel for the petitioner, has assailed the aforesaid impugned order on the following grounds:

a] That the Metropolitan Magistrate, Kurla, by order dated 31 October 2015 in C.C. No. 104/M/2013 has already directed the petitioner to pay maintenance of Rs.12,500/- to the daughter Asmi till she attains the age of majority. This aspect, according to learned counsel for the petitioner, has not been taken into consideration whilst making the impugned order;

b] The material on record suggests that the petitioner, who is a salaried employee (Doctor), in fact, earns salary which is much lesser than the respondent-mother. Therefore, learned counsel for the petitioner submits that there was no justification in making the impugned order, particularly, to the extent, the order directs the petitioner to pay an amount of Rs.3000/- per month as pocket money to the daughter Asmi. Learned counsel for the petitioner submitted that Asmi, who is now 12 years of age, does not require pocket money of Rs.3000/- per month.

3] Having heard learned counsel for the petitioner and perused the record, in my judgment, there is no case made out to interfere with the impugned order. The Family Court upon due consideration of circumstance that the petitioner is required to pay maintenance of Rs.12,500/- per month, in terms of the order made by the Metropolitan Magistrate, has restricted the interim maintenance to only Rs.3000/- per month in the present case. In arriving at such

decision, the Family Court has taken into consideration the circumstance that Asmi, who is by now 12 years of age, studies in ICSE School and there are considerable expenses involved for the purposes of her education. The Family Court has also taken into consideration that the petitioner is a Doctor and from out of his income, able to afford the payment of such amounts towards maintenance. The record also indicates that the respondent-mother is a doctor engaged in a private practice. The custody of Asmi is with the mother and the mother is also contributing to the maintenance of Asmi. Considered from this perspective, it cannot be said that the impugned order is vitiated by any jurisdictional error or perversity.

4] Ms Baig may, however, be right in her submission that the payment of Rs.3000/- per month towards pocket money, at least, at this stage, may not be advisable. However, that by itself, is no reason to interfere with the impugned order. The petitioner can always be granted liberty to apply to the Family Court for investing the amount of Rs.3000/- per month in some suitable financial instrument/investment scheme in the name of Asmi, so that Asmi can have some lumpsum amount for her further education. In case, such application is made by the petitioner, the Family Court to decide the same, after afford of opportunity of hearing to the respondent.

5] In case the directions in the impugned order have not been complied with till date, the petitioner is granted four weeks time to comply with the same. In case, there is no compliance within a period of four weeks from today, the Family Court shall be at liberty

to take up such proceedings, as may be necessary for the purposes of enforcement of the directions contained in the impugned order.

6] Except for the liberty as aforesaid, there is no case made out to interfere with the impugned order. This petition is, accordingly, dismissed. 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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