

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12621 OF 2015

Priya N. Subandh .. Petitioner
vs.
Nikhil J. Subandh .. Respondent

Mr. Kuldeep U. Nikam for the Petitioner.
Mr. Himanshu Nagarkar for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 5 FEBRUARY 2016.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 1 December 2015 made by the Family Court, recalling the order dated 5 October 2015, by which, ad-interim maintenance had been granted to the Petitioner and finally, declining the Petitioner interim maintenance during pendency of the petition bearing RA. No. 27 of 2015.

3] Mr. Nikam, learned counsel for the Petitioner, has submitted that the Family Court, by its order dated 5 October 2015, had granted the Petitioner ad-interim maintenance at the rate of Rs.7,500/- per month until further orders. By the impugned order dated 1 December 2015, the order dated 5 October 2015 has been

recalled and the Petitioner has been denied interim maintenance. Mr. Nikam submitted that the only reason for such denial is the alleged suppression of the alleged circumstance that the Petitioner is professionally undertaking the business of a Mehandi Parlor and Classes. Mr. Nikam pointed out that the Petitioner is not undertaking any such classes and the Face-book page, upon which the Family Court has placed reliance has been misinterpreted. Mr. Nikam points out that the Face-book page, at the highest, suggest that the Petitioner is making efforts to earn some income from what is basically her hobby and in absence of any regular income, the Family Court ought not to have dismissed the application for interim maintenance on the ground of suppression or otherwise.

4] Mr. Nagarkar, learned counsel for the Respondent, has quite ably defended the impugned order, by pointing out that the Face-book page very clearly establishes that the Petitioner engaged in the profession of operating a Beauty Parlor and Classes. By reference to the Face-book page, Mr. Nagarkar points out that the response for such business is quite substantial and even the classification of the Face-book page makes it clear that the Petitioner is engaged in a local business. Mr. Nagarkar submitted that the plea of the Petitioner is engaged in a hobby, is only an afterthought and cannot be

accepted. Mr. Nagarkar has relied upon the decision of the Hon'ble Apex Court in case of *A. Shanmugam V. Ariya Kshatriay Rajkula Vamsathu Madalya Nandhavana Paripalanai Sangam represented by its President - AIR 2012 SC 2010 (1)*, to contend that the parties are required to be candid in their pleadings and those should approach the Court of law with unclean hands must be denied reliefs on the said ground alone. Mr. Nagarkar submitted that the impugned order suffers neither from any jurisdictional error nor is the same vitiated from any of the reasons. Therefore, this Court should not interfere with the same in exercise of its jurisdiction under Article 227 of the Constitution of India.

5] The rival contentions now fall for my determination.

6] Mr. Nagarkar, is right in his submission that the Petitioner should have been more candid to the Court. However, this does not appear to be a case of any deliberate suppression. Based upon the material on record, it does appear that the Petitioner is making attempts to possibly earn an income by engaging in Beauty Parlor business. However, there is really no scope to presume on the basis of material on record that the Petitioner is some well established professional or that the Petitioner is well settled in the business of

operating a Beauty Parlor or taking up Mehendi classes. It is also possible that the Petitioner, may be earning some income. However, there is no basis to conclude that the Petitioner is presently earning some regular income. At least, the Face-book page, upon which, the reliance has been placed both by Mr. Nagarkar as well as the Family Court whilst making the impugned order, does not suggest that the Petitioner is some well settled professional or is well settled in her business, insofar as Beauty Parlor or Mehendi Classes are concerned. Having said this, it must once again be noted that Mr. Nagarkar is right in his submission that the Petitioner was required to be more candid in her pleadings.

7] Therefore, this is not a case where claim for interim maintenance could have rejected only on the ground of suppression. However, there is no case made out, on the basis of material on record, for grant of interim maintenance, at the rate of Rs.7,500/-. In fact, the learned counsel for the Petitioner has contended that the Petitioner's claim for interim maintenance is at the rate of Rs.15000/- per month. Now that the Respondent has filed his reply and also produced documents, which *prima-facie*, inspires confidence that his salary is in the range of Rs.15000/- per month, the insistence on the part of the Petitioner that she be paid interim

maintenance at the rate of Rs.15,000/- per month, appears to be downright, unreasonable.

8] From the material on record, it would be appropriate that pending the final determination of the maintenance amount, the Petitioner is granted interim maintenance at the rate of Rs.2000/- per month. This will be appropriate considering the circumstance and the contention made by the learned counsel for the Respondent that almost two months prior to apply for maintenance, the Petitioner was in service and earning salary of approximately Rs.8000/- per month. No doubt, this position is disputed by Mr. Nikam, who appears for the Petitioner.

9] From the material on record, the case set out by the Respondent appears to be more probable. In any case, the material on record, certainly establishes that the Petitioner, though presently may not be earning substantial amount, does have the capacity of earning some amounts, which could contribute to her own maintenance. This is also an aspect, which is required to be taken into consideration.

10] Therefore, upon cumulative consideration of the aforesaid facts and circumstances, the impugned order is set aside. Instead,

the Respondent is directed to pay the Petitioner interim maintenance at the rate of Rs.2000/- (Rs. Two Thousand) per month from the date of application, till the final disposal of the petition bearing P.A. No. 27 of 2015. The said petition is expedited. The arrears towards interim maintenance may be cleared by the Petitioner within a period of six weeks from today.

11] Rule is partly made absolute to the aforesaid extent. There shall, however, be no order as to costs.

12] It is clarified that the observations, either in the order impugned or for that matter the present order, are only *prima-facie* and for the purposes of deciding the issue of interim maintenance. Therefore, the Family Court need not be influenced by any such observations, at the stage of finally disposing of Petition bearing P.A No. 27 of 2015.

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

(M. S. SONAK, J.)

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