

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5554 OF 2017

Dipak Anna Phulare ..PETITIONER

VERSUS

Sangita Dipak Phulare ..RESPONDENT

....
Mr. S.S. Kulkarni, Advocate for petitioner.
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**CORAM : M.S. SANKLECHA, J.
DATED : 02nd MAY, 2017**

ORDER :

1. This petition challenges the order dated 10th February, 2017 passed by the Civil Judge, Senior Division, Beed. By the impugned order, the respondent's application under Section 24 of the Hindu Marriage Act, 1955 (Act) claiming interim maintenance till disposal of the proceeding was allowed by granting an interim maintenance of Rs.4,000/- per month as against Rs.6,000/- per month claimed.

2. The grievance of Mr. Kulkarni, learned Counsel for the petitioner is that the impugned order has awarded an exorbitant maintenance of Rs.4,000/- per month. This in view of the fact that the petitioner is only a

labourer and the impugned order has erroneously proceeded to award interim maintenance on the basis of the petitioner's income of Rs.20,000/- to Rs. 30,000/- per month as he owns an agricultural land and a crane. The learned Counsel for the petitioner states that the petitioner has no agricultural land and in support thereof invites my attention to the certificate dated 05th April, 2017 issued by Talathi. It is further contended that the petitioner has also to look after the three children born during subsistence of the marriage.

3. The certificate dated 05th April, 2017 relied upon by the learned Counsel for the petitioner states that the petitioner has no land in his name. However, no such certificate was produced before the Trial Court which granted the order of maintenance. The respondents therein had come with a specific case that the petitioner is an owner of an agricultural land and a crane and has an income of Rs.20,000/ to Rs.30,000/- per month. This was a positive case which the respondent had come with and the onus was on respondent to lead evidence to dispute the same. This was not done. In terms of Section 24 of the Act, maintenance pending litigation for divorce is to be awarded where the spouse claiming such maintenance has no sufficient income for her/his maintenance.

4. Mr. Kulkarni, learned Counsel in support of his submission that the maintenance granted by the Trial Court is exorbitant relied upon the decision of the Apex Court in the case of ***Jasbir Kaur Sehgal Vs. District Judge, Dehradun and Others (1997) 7 SCC 7*** and specifically invites my attention to the following observations:

“8. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

It is observed by the Apex Court that the Court has to decide upon the maintenance to be awarded depending upon the facts and circumstances before it. There can be no set formula to determine the maintenance. It will all depend upon the evidence before the Court determining the

maintenance. In the facts of this case, the interim maintenance of Rs.4,000/- per month granted to the respondent cannot be said to be excessive or extortionate.

5. On the basis of the evidence available before the Court, the maintenance granted to the wife is Rs.4,000/- per month notwithstanding the fact that she had sought maintenance of Rs.6,000/- per month is reasonable. Therefore the impugned order calls for no interference. Petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

SSD