

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.1029 OF 2017

Mr. Prashant Dinesh	..Petitioner
Versus	
Smt. Rupal Prashant	..Respondent

Mr. Nitin Gangal for the Petitioner.
Ms. Shruti Desai i/by Shruti Desai & Co., for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 10th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 15.11.2016 passed by the Learned Judge of the Family Court No.3, Mumbai, by which order, the application Exh.19 filed by the Petitioner for issuance of the witness summons to the director of M/s. Origin Insurance Brokers India Pvt. Ltd. for producing the employment record of the Respondent herein came to be allowed. However directions as contained in clause 3 of the operative part came to be issued, the said clause 3 is reproduced hereinunder for the sake of ready reference :-

“3. By way of interim arrangement, the Petitioner is directed to pay advoc interim amaintenance @ Rs.10,000/- per month to the Respondent from the month of November 2016 till the interim maintenance application is decided.”

Hence directions came to be issued for payment of ad-hoc interim maintenance at Rs.10,000/- per month to the Respondent herein.

2 The principal grievance of the Petitioner is that the directions as contained in clause 3 were issued when in fact the Trial Court was concerned with the adjudication of the application Exh.19 filed by the Petitioner for issuance of witness summons. It was therefore the submission of the Learned Counsel that directions as contained in clause 3 of the operative part regarding interim maintenance could not be issued as parties were in fact not heard in respect of the application for interim maintenance and the application seems to be allowed only because a grievance was made by the Respondent that her application for interim maintenance was pending for sometime.

3 The Learned Counsel appearing on behalf of the Respondent sought to initially justify the directions as contained in clause 3 of the impugned order by relying upon the observations made in paragraph 2 of the impugned order, where the Learned Judge has adverted to the application for maintenance pendent-lite Exh.8 filed by the Respondent. In my view, mere observation made in the order would not justify the directions as contained in clause 3 of the operative part of the impugned order. An application for interim maintenance is by itself an independent application and is required to be adjudicated independently, and not taken up with the application filed by the other party for some other purpose. The parties are also required to be given a proper opportunity,

as the right of the party to interim maintenance as also the liability of the other party to pay interim maintenance, is concerned.

4 In my view, therefore clause 3 of the operative part of the impugned order would have to be quashed and set aside and is accordingly quashed and set aside. This Court is informed that in so far as the witness summons is concerned, the impugned order has already been implemented as concerned witness has produced the documents in respect of Respondent. Hence, it would be just and proper to issue direction to the Trial Court i.e. Learned Judge of the Family Court No.3, Mumbai, to decide the application Exh.8 for maintenance pendent-lite filed by the Respondent. The Learned Judge therefore to hear and decide the said application on or before 10.03.2017. Since the matter in question is to be listed before the concerned Family Court on 14.02.2017, the Learned Counsel for the parties may apprise the Court of the instant development. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]