

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1120 OF 2017

Kamlesh K. Godhwani .. Petitioner
vs.
Mrs. Lata K. Godhwani .. Respondent

Mr. Hitesh P. Vyas i/b. Mr. Chandrashekhar Yadav for the Petitioner.
Mr. U.P. Warunjikar for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 08 DECEMBER 2017

ORAL JUDGMENT :-

1] Heard Mr. H.P. Vyas, learned counsel for the petitioner and Mr. Warunjikar, who has been appointed under the Legal Aid Scheme for the respondent.

2] The challenge in this petition is to the order dated 15th December 2016 made by the Family Court in the course of execution of the judgment and decree dated 23rd January 2015 determining and directing the petitioner to pay an amount of Rs.1,62,700/- towards educational expenses of his minor son Chaitanya.

3] Mr. Vyas, learned counsel for the petitioner submits that the petitioner is already paying maintenance at the rate of Rs.5,000/- per month to his son Chaitanya. He submits that paragraph 57 of

the judgment and decree dated 23rd January 2015 makes it clear that the expenses towards maintenance and education of Chaitanya by the petitioner husband and the respondent wife are to be borne proportionately. He therefore submits that the claim made by the respondent wife is disproportionate, inflated and contrary to the judgment and decree dated 23rd January 2015. He submits that the executing court, in the present case, has traveled beyond the judgment and decree dated 23rd January 2015 and therefore, the impugned order, warrants interference.

4] Mr. Vyas further submits that the respondent wife has not only raised inflated claims but has refused to furnish any invoices or receipts in respect of the claims. The Family Court, without insisting upon receipts and invoices, has grossly erred in allowing the inflated claim towards educational expenses of Chaitanya.

5] Mr. Vyas submits that determination of almost Rs.43,700/- per annum (Rs.27,500/- + Rs.16,200/-) towards transport expenses to and fro the home and the college or to and fro the home and the coaching class centre is exorbitant. He submits that the college is at the distance of hardly 2 kms. from the home and since the petitioner

has already provided Chaitanya with a bicycle, there is no justification for award of such transport expenses. Mr. Vyas also submits that the award of Rs.10,000/- per annum towards canteen expenses, has no nexus with the educational expenses of Chaitanya and in any case, he submits that the respondent wife can always cook at home and there is no necessity for Chaitanya to spend any amounts in the canteen. He submits that in any case, this expense has to be included in the amount of maintenance Rs.5,000/- per month which the petitioner regularly pays to Chaitanya.

6] Mr. Vyas further submits that the expenses claimed towards data connection, notebook, stationery, bag are also exorbitant and the executing court erred in awarding the same in the absence of receipts and invoices. Mr. Vyas submits that expenses towards college trip or college functions are again, unnecessary expenses which cannot be foisted upon the petitioner. Finally, Mr. Vyas submits that expenses of Rs.3,000/- per annum as miscellaneous expenses can never be regarded as expenses towards education of Chaitanya and the Family Court, has clearly exceeded the jurisdiction in awarding the same.

7] Mr. Vyas further submits that there are issues of access for which, the petitioner has to file an application before the executing Court. He submits that even the respondent earns and therefore, she should also proportionately bear expenses towards Chaitanya. He clarifies that this is in terms of the judgment and decree of which the execution has been applied for. For all these reasons, Mr. Vyas submits that the impugned order is liable to be set aside.

8] Mr. Warunjikar, learned counsel for the respondent, at the outset submits that he has been appointed to appear in this matter under the Legal Aid Scheme. He points out that a false statement was made on behalf of the petitioner to the effect that the petitioner has already paid the amounts under all the heads which are reflected in the operative part of the impugned order dated 15th December 2016 for the academic year 2016-2017 and on the said basis, an ad-interim order was obtained in terms of prayer clause (c). He submits that most of the payments except perhaps some of the fees towards coaching classes were not paid by the petitioner. Mr. Warunjikar clarifies that only fees towards item No.8 of the operative portion of the impugned order appears to have been paid as per the instructions received by him sometime earlier.

9] Mr. Warunjikar submits that in fact, the respondent had made a claim in an amount of Rs.2,01,700/- entirely consistent with the decree. However, the executing Court, by the impugned order has scaled down the claim to Rs.1,62,700/-. He submits that this represents the educational expenses for the entire year and there is absolutely nothing unreasonable in the determination made by the executing Court. He points out that the petitioner is a General Manager (Sales) in a Multinational Company. He points out that there is no dispute that the petitioner earns almost double the salary of what the respondent-wife earns. For these reasons, Mr. Warunjikar submits that this petition may be dismissed with exemplary costs.

10] The rival contentions now fall for determination.

11] Since, the petitioner's main contention is that the executing court has traveled beyond what has been specified in paragraph 57 of the judgment and decree dated 23rd January 2015, it is only appropriate that the contents of the said paragraph are quoted verbatim :

“57. As regards the maintenance for son Chaitanya is concerned, he is staying with the respondent. He is being educated in Revachand Bhojwani School. The petitioner has agreed to incur all the educational expenses for the child. As per

*the order below Exh.11, the petitioner was directed to incur the educational expenses. The child is growing. He will go in college. The expenses of tuition fees, uniform, books, lab expenses (if he opts Science) will increase. It is well settled law that when both the parties are working, the child's expenses should be incurred proportionately. The petitioner's salary is double to that of respondent proved income of Rs.30,000/-. **If the respondent takes care of the child's daily expenses, clothes, the petitioner shall incur the expenses of school, college educational fees, tuition fees, uniform, books, lab expenses, extra curricular activities, etc. He shall also pay Rs.5,000/- p.m. to child Chaitanya for his expenses other than the educational requirements.***

[Emphasis supplied]

12] The analysis of the aforesaid paragraph reveals that there is indeed observation that when both parties are working the child's expenses must be borne proportionately. However, this is immediately followed by the observation that in the present case, since, the respondent wife, takes care of the child's daily expenses and clothes, the petitioner must bear expenses towards school, college, educational fees, tuition fees, uniform, books, lab expenses, extra curricular activities etc. This is in addition to the maintenance of Rs.5,000/- per month to the child Chaitanya.

13] This means that the judgment and decree dated 23rd January, 2015, apart from holding that the expenses towards Chaitanya must be borne proportionately by the parents has proceeded to precisely state the manner in which and the proportion in which such expenses should be borne. The judgment and decree dated 23rd June 2015 has attained finality and the executing court, is therefore, bound by the same. The expenses, which the petitioner has been

directed to bear, relate *inter alia* to school and college fees, tuition fees and other items specifically stated in paragraph 57 of the judgment and decree dated 23rd January 2015. Besides, from the context as well as the use of 'etc.' it is quite clear that the list of the items referred to in paragraph 57 of the judgment and decree dated 23rd January 2015 was not meant to be exhaustive but only illustrative. Therefore, as long as the expenses claimed are not totally extraneous to the items illustrated in paragraph 57 of the judgment and decree dated 23rd January 2015, the award of the same by the executing court cannot be said to be an exercise in excess of jurisdiction. In such circumstances, it cannot be said that the executing court, has travelled beyond the decree. There is accordingly, no merit in the main contention raised on behalf of the petitioner.

14] As against the claim of Rs.2,01,700/- made by the respondent wife towards an educational and other expenses in terms of paragraph 57 of the judgment and decree dated 23rd January 2015, the executing court, has determined and awarded an amount of Rs.1,62,700/-. This amount represents the expenses for the entire year i.e. academic year 2016-17. Taking into consideration the financial status of the petitioner there is absolutely nothing exorbitant or unreasonable or disproportionate in such determination. The petitioner is reported to be a General Manager (Sales) in a Multinational Company. The petitioner is reported to be drawing an income which is twice the income of the respondent wife. This position has not even been challenged though, the same has been specifically recorded in the judgment and decree dated 23rd

January 2015.

15] The expenses towards transportation between residence and college or the coaching centre, are certainly expenses covered in paragraph 57 of the judgment and decree dated 23rd January 2015. Similarly, expenses at the college canteen or towards college function / trip are extra curricular activities related to education of Chaitanya and they are expressly covered in paragraph 57 of the judgment and decree dated 23rd January 2015. The same is the position of rest of the items against which determination is made. Miscellaneous expenses determined by the executing court are only Rs.3,000/- per annum and certainly, the school / college going child cannot be grudged or denied on the ground that no receipts or invoices are available to establish such expenses. The expenses towards note book, stationery or data connection are also, well within the reasonable bounds and therefore, the executing court, was quite justified in determining and awarding the same. Such expenses could not have been denied on the ground that no proper receipts or invoices were produced.

16] The contention that the petitioner has purchased a bicycle for Chaitanya and therefore, the award towards transport expenses is exorbitant is quite a misconceived contention. In a city like Pune, it is not always or easily possible for children to access their school or coaching classes with bicycle. There are issues of security of the bicycle, not to speak of the inherent hazards on congested roads. The transport expenses are again, well within reasonable bounds and the petitioner's contention are both unfortunate and insensitive.

17] In this case, it needs to be reiterated that the contentions on behalf of the petitioner are indeed unfortunate and insensitive. The petitioner is virtually quibbling over proportionately small amounts payable to his own son for educational purposes. The expenses claimed on behalf of Chaitanya are absolutely reasonable and in fact, on a conservative basis. In such matters, it is not always possible to produce invoices or receipts. This is not a case of some dispute between partners in a partnership firm or some commercial dispute for taking of accounts. This is a case where the petitioner's own son, seeks reimbursement for expenses incurred by him for his educational expenses. To quibble over amounts like Rs.3,000/- per annum towards miscellaneous expenses or to submit that canteen expenses of Rs.10,000/- per year are exorbitant or have no nexus with the educational needs of the child, are, the contentions, which are extremely insensitive, apart from being entirely misconceived. This is not a case where the petitioner cannot afford to meet such expenses.

18] If the petitioner has some issues with regard to access which has been already granted to him, it is undoubtedly open to the petitioner to take out appropriate proceedings in that regard and to enforce the access. However, to grudge payment of even a conservative amount like Rs.1,62,700/- per annum towards his own son's education in XIth Std. cannot be countenanced. The petitioner, again, by resisting such payment seek to exert some sort of pressure in the matter of access. Such quibbling over a relatively small amount can neither be appreciated nor be encouraged by a writ

court exercising equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

19] There is yet another serious issue involved in this matter. The petitioner, in this case, secured ad interim relief in terms of prayer clause (c) of the petition by making a statement before this Court, which is reflected in the order dated 16th February 2017, by which such ad interim relief came to be granted to the petitioner. It turns out that such statement, was far from accurate.

20] The order dated 16th February 2017 made by this Court reads as follows :

“1 Heard the Learned Counsel Mr. Vyas appearing for the Petitioner.

2 Issue notice to the Respondent, returnable on 9-3-2017. In addition to service of notice through Court, the advocate for the Petitioner shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the Respondents and shall file affidavit of service before the returnable date.

3 There would be ad-interim relief in terms of prayer clause (c). This is on the basis that the Petitioner has already paid the amounts under all the heads which are reflected in the operative part of the impugned order for the academic year 2016-2017.”

[Emphasis supplied]

21] Despite repeated queries and opportunities, Mr. Vyas, learned counsel for the petitioner was unable to make good the statement made on behalf of the petitioner that the petitioner has already paid

the amounts under all the heads which are reflected in the operative part of the impugned order for the academic year 2016-17. For this purpose, reference is necessary to the operative portion of the impugned order dated 15th December 2016, which is what is referred to in this Court's order dated 16th February 2017.

22] The operative portion of the impugned order dated 15th December 2016 reads as follows :

“ORDER

1. *The application is allowed as under:-*

2. *The judgment-debtor is directed to pay an amount of Rs.1,62,700/- (Rupees One lakh Sixty Two Thousand Seven Hundred only) to darkhast – holder towards following expenses of son.*

1.	<i>Travel to and fro college</i>	<i>Rs.27,500/-</i>
2.	<i>Coaching classes part and final amount</i>	<i>Rs.21,000/-</i>
3.	<i>Travel to and fro coaching classes</i>	<i>Rs.16,200/-</i>
4.	<i>Notebooks, stationery and bag</i>	<i>Rs.10,000/-</i>
5.	<i>Data connection</i>	<i>Rs.12,000/-</i>
6.	<i>Canteen expenses</i>	<i>Rs.10,000/-</i>
7.	<i>College function and trip</i>	<i>Rs.10,000/-</i>
8.	<i>Coaching classes (12th)</i>	<i>Rs.50,000/-</i>
9.	<i>Miscellaneous expenses</i>	<i>Rs. 3,000/-</i>
10.	<i>Uniform and shoes</i>	<i>Rs. 3,000/-</i>
		<i>-----</i>
<i>Total</i>		<i>Rs.1,62,700/-”</i>
		<i>=====</i>

23] Apart from several amounts remaining unpaid on the date when the statement was made to this Court i.e. on 16th February

2017, it is necessary to note Mr. Vyas's contention that the amount of Rs.50,000/- towards coaching classes for XIIth Std., referred to in clause (8) of the operative portion of the impugned order was not paid, because, such amount was not payable for the academic year 2016-17. The contention, is again, quite misconceived. The statement, as recorded by is quite clear that the petitioner, has already paid the amounts under all the heads which are reflected in the operative part of the impugned order for the academic year 2016-17. This was an unqualified statement. There was no disclosure that some amount remains to be paid. Even now there is no good explanation about other amounts which remain unpaid.

24] The contention is even otherwise misconceived because, it is well known, that students, take coaching classes for XIIth Std. whilst they are in XIth Std. itself. The distinction now sought to be made is really one without difference. The distinction hardly mitigates the circumstance that ad interim relief were obtained by making a wrong statement before this Court. On basis of the wrong statement and the ad interim relief secured on the basis thereof, the petitioner, has gained undue advantage, not to speak of the damage caused to the system of administration of justice. The Court relies upon such statements and grants interim orders. If such statements turn out to be wrong, it becomes difficult to take such statements at face value particularly at stage where opposite party is yet to be served.

25] Mr. Vyas submits that it is for the respondent wife to establish that the petitioner has not made payments in terms of the impugned order dated 15th December 2016. Again, this submission is quite

misconceived. Since, the petitioner had made a statement that he had paid the amounts under all the heads which are reflected in the operative part of the impugned order for the academic year 2016-17, it was for the petitioner, to make good such statement.

26] In fact, the petitioner, ought not to have instructed his Advocate to make such a statement without having material with him in support of such a statement. Ultimately, the Advocates appearing for the parties make statements on behalf of the parties on the basis of instructions obtained from the parties. If, such instructions are ultimately found to be incorrect, the parties, will have to bear the consequences of such statements.

27] This is not a case of any reflection upon Mr. Vyas, learned counsel for petitioner. No doubt as stated by him, the statement which was made on 16th February 2017 was on the basis of instructions that he may have received from the petitioner. However, if the statement on basis of instructions is found to be wrong or inaccurate, the petitioner, cannot avoid the consequences, particularly, in a matter of this nature, where, the petitioner, quite insensitively has grudging payment of very reasonable amounts towards his own son's educational expenses. Again, this is not at all a case where the petitioner, cannot afford to make such payments. The petitioner, is a General Manager (Sales) in a Multinational Company. This is accordingly, a case where exemplary costs are liable to be imposed upon the petitioner.

28] This petition is therefore dismissed. The ad interim order

granted earlier is vacated. The petitioner is directed to pay costs of Rs.25,000/- to his son Chaitanya within a period of four weeks from today.

29] In case any applications made by the petitioner are pending before the executing court, such applications shall not be considered by the executing court unless the petitioner pays the costs to Chaitanya by way of a demand draft or through any other banking channels. In fact, the petitioner is directed to file an affidavit of compliance within six weeks from today.

30] In addition to the costs, the petitioner is also directed to pay the balance amounts in terms of the impugned order within a period of four weeks from today and file compliance within a period of six weeks from today.

31] Mr. Vyas, learned counsel for the petitioner seeks a stay in the matter of payment of costs as also execution of the impugned order. Since, already, four weeks time has been granted to the petitioner to pay costs as well as the balance amount in terms of the impugned order, there is no necessity of any stay. However, as a matter of abundant caution, it is clarified that the respondent shall not apply for execution for a period of four weeks from today.

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

(M. S. SONAK, J.)