

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

WRIT PETITION NO.1916 OF 2017

Jyoti Kamal Pathak .. Petitioner
Vs.
Kamal Kumar Ganesh Pathak .. Respondent

Ms.Nayana S. Bobade i/by Mr.Manoj J. Bhatt for the petitioner.
Mr.Nikhil N. Wadikar i/by Ms.Maya B. Idnani for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 20th November 2017

P.C.:

. Rule. Rule made returnable forthwith. Learned counsel appearing for the respondent waives service. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 30th August 2016 passed by the learned Judge of Family Court No.2, Mumbai allowing the application of the petitioner only for an amount of Rs.4000/- per month against the claim of interim maintenance @ Rs.50,000/- per month plus Rs.5,000/- per month towards medical expenses and Rs.30,000/- per month as house rent on various grounds.

3. Learned counsel for the parties state that the learned Judge of the Family Court has passed the order dated 30th August 2016 based on the fact that none of the parties had produced appropriate documents to consider the application for interim maintenance in support of their rival contention.

4. Both the parties have agreed to produce relevant documents before the learned Judge of the Family Court in support of their rival contentions made in the application made by the petitioner for interim maintenance and for house rent and medical expenses. It is also agreed by and between the parties that till the fresh order is passed by the learned Judge of the Family Court on the said application for interim maintenance below Exhibit-17 filed by the petitioner, the respondent would continue to pay the petitioner a sum of Rs.4,000/- towards interim maintenance without prejudice to the rights and contentions of both the parties and subject to the final order as may be passed by the learned Judge of the Family Court. Statement is accepted.

5. Both the parties are accordingly permitted to file compilation of documents before the learned Judge of the Family Court No.2, Mumbai within three weeks from today and shall serve their respective compilation on each other. The respondent shall also pay Rs.10,000/- in lumpsum to the petitioner towards litigation expenses as directed in the impugned order, subject to the final outcome of the said application for interim maintenance without prejudice to the rights and contentions of the respondent.

6. Along with compilation of the documents proposed to be filed by both the parties, the parties shall disclose the proof of their income as well as the income of opponent on the date of making application for interim maintenance as well as on the date of filing compilation available with them.

7. The impugned order dated 30th August 2016 is accordingly set aside in the aforesaid terms. It is made clear that this Court has not expressed any views on merit of the matter. All the contentions of the parties are kept open.

8. The learned Judge of the Family Court shall decide the application for interim maintenance on its own merits without being influenced by the observations made in the impugned order and on the basis of the material which was already produced on record and to be produced by both the parties on record. The learned Judge of the Family Court shall make an endeavour to decide the application for interim maintenance within three months from the date of the parties filing their respective compilation of documents. Both the parties are directed to co-operate with each other and with the learned Judge of the Family Court in expeditious disposal of the application.

9. Rule is made absolute in the aforesaid terms. No order as to costs.

R.D. DHANUKA, J.