

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2140 OF 2015**

Shri Nitin Ashok Magnani

..Petitioner

Vs.

Smt. Dia Nitin Mangnani

..Respondent

Mr. P. P. Runwal for the Petitioner

Mr. J. M. Puranik for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 16th FEBRUARY, 2017

P.C.

1 The above Writ Petition is companion to Writ Petition No.2457 of 2016 which has been dismissed by an order passed today.

2 The above Writ Petition challenges the same order dated 22-9-2014 as challenged in the said Writ Petition No.2457 of 2016 passed by the Learned Judge of the Family Court No.3, Mumbai, by which order, the application Exhibit 14 filed by the Respondent-wife for interim maintenance came to be partly allowed to the extent of granting maintenance to the Petitioner @ Rs.11,000/- per month. The Petitioner husband questions the grant of Rs.11,000/- p.m. as interim maintenance.

2 The Petitioner and the Respondent were married sometime in the year 2011 and are now presently estranged. The Respondent is staying

separately from the Petitioner. The Petitioner has instituted proceedings for divorce on the ground of cruelty being Petition No.A-1628 of 2013 in the Family Court Mumbai. In the said proceeding, the Respondent filed the instant application claiming interim maintenance. It seems that the Respondent had earlier filed an application for grant of litigation expenses. The said application was directed to be heard along with the main Petition and proper directions could be issued in the final order that would be passed in the main Petition.

3 In so far as the application for interim maintenance is concerned, it was the case of the Respondent that the Petitioner is doing business of ready made garments and that he has two other shops which he has rented out. It was also the case of the Respondent that the Petitioner has a car which he used for travelling from the place of his residence from Mulund to the business place in Bhiwandi. However apart from making the said averments, the Respondent did not produce any material on record to indicate the actual income of the Petitioner. The Petitioner file his reply and denied that he was having business of ready made garments. It was his case that the shop is in the name of his mother and that the income depends upon the sale. It was the case of the Petitioner that the Respondent-wife is employed with HDFC but did not produce any material on record to the said effect.

4 The Trial Court i.e. the Learned Judge of the Family Court considered the said application for interim maintenance and as indicated above has by the impugned order dated 22-9-2014 partly allowed the same to the extent of directing the Respondent to pay Rs.11,000/- p.m. The Learned Judge has observed that the Petitioner in the marriage Petition has not disclosed his true income and has not disclosed income source. The Learned Judge further observed that the Respondent has avoided the responsibility of maintaining his legally wedded wife and he has also stated that the Petitioner has source of income but he has not produced any cogent material in that regard. The Family Court having regard to all the aforesaid circumstances was of the opinion that grant of maintenance of Rs.11,000/- p.m. would meet the ends of justice.

5 The Learned Counsel for the Petitioner would seek to reiterate the case of the Petitioner before the Trial Court that the Respondent has not produce any material to indicate his income. It was the also the case of the Petitioner that his annual income is in the region of Rs.2.35 lakhs as mentioned in his Income Tax return which is annexed to the above Petition.

6 It is required to be noted that the Income Tax return has been produced before this Court for the first time by the Petitioner. Even taking the Income Tax return into consideration the interim maintenance fixed at

Rs.11,000/- p.m. cannot be said to be excessive or exorbitant. Having regard to the material on record, it cannot be said that the order passed by the Trial Court i.e. the Learned Judge of the Family Court fixing the interim maintenance @ Rs.11,000/- suffers from any illegality or infirmity for this court to interfere in its Writ Jurisdiction under Articles 226 and 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]