

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4009 OF 2016

Prashant P. Aklujkar .. Petitioner
vs.
Shital P. Aklujkar .. Respondent

Mr. A.S. Kulkarni for the Petitioner.
Mr. Chetan C. Agrawal for the Respondent.

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

P.C. :-

1] Heard Mr. Kulkarni, learned counsel for the petitioner and Mr. Agrawal, learned counsel for the respondent.

2] The challenge in this petition is to the order dated 12th November 2014, by which, the Family Court has directed the petitioner to pay interim maintenance of Rs. 9000/- per month to the wife and Rs.3000/- per month to the minor daughter pending disposal of Petition No. A.611/2012 for judicial separation.

3] Mr. Kulkarni, at the outset, submitted that the petition for judicial separation has since been disposed of on 12th October 2015. If this is the position, then technically speaking, this petition has rendered infructuous. If at all, the petitioner was aggrieved by the impugned order, then the petitioner, should have instituted an

appeal against the order dated 12th October 2015 and in such appeal, to have question the impugned order dated 12th November 2014.

4] However, Mr. Kulkarni submits that the quantum of maintenance is too excessive and therefore, this Court may determine the issue. He submits that pursuant to the orders issued by the Government, the petitioner's Pharmacy business has been closed down. He submits that the respondent is earning and further, the respondent and the minor daughter are residing in the premises provided by the petitioner. He submits that if all these circumstances are taken into consideration, then there was no warrant for awarding interim maintenance of Rs.12,000/- per month.

5] On perusal of the record, it cannot be said that the award of interim maintenance at the rate of Rs.9000/- to the wife and Rs.3000/- to the minor daughter is excessive in the facts and circumstances of the present case.

6] The petitioner, admittedly, holds a Degree of Bachelor in Pharmacy. The petitioner was also operating a business of Pharmacy.

The circumstances in which the Pharmacy business as allegedly discontinued are not quite clear. In any case, the petitioner, cannot, despite such qualification and financial capacity, claim that he is sitting idle and on such basis, avoid payment of maintenance.

7] The impugned order, is quietly appreciated this position and awarded maintenance.

8] Mr. Kulkarni has also submitted that the respondent is a Fashion Designer and this position has not been taken into consideration by the learned Trial Judge. In the first place, there is no proper material in this regard. In any case, even assuming that the respondent-wife is earning some amount, that by itself does not absolve the petitioner from payment of interim maintenance. Looking to the quantum of interim maintenance, it cannot be said that the same is too excessive. In fact, the maintenance awarded to the minor daughter appears to be on lower side. Therefore, even assuming that some adjustment is required to be made insofar as the maintenance to the wife is concerned, the same, will have to be setup against the maintenance in favour of the minor daughter. In

such circumstances, there is no case made out to interfere with the impugned order under the Articles 227 of the Constitution of India.

9] In case of *Shamima Farooqui Vs. Shahid Khan – (2015) 5 SSCC 705*, the Hon'ble Supreme Court has noted that sometimes a plea is advanced by the husband that he does not have the means to pay, if that he does not have job or his business is not in doing well. The Supreme Court proceeds to state that these are only bald excuses and in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife. Same principle will apply with regard to providing maintenance to the minor daughter. In fact, the principle will apply with greater rigor when it comes to maintenance of minor children.

10] Upon cumulative consideration of the aforesaid, there is no case made out to interfere with the impugned order. This petition is therefore, dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)