

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

WRIT PETITION NO. 5566 OF 2017

Mr.Shailendra Jugalkishor Gaikwad	...Petitioner
<i>Versus</i>	
Mrs.Naina Shailendra Gaikwad	...Respondent

Mr.Satish S Mande for the Petitioner.

Ms.Megha Shashi Bajoria for the Respondent (Appt By Legal Services)

CORAM : M. S. SONAK, J.

DATE : 06th DECEMBER 2017

P.C.

1. Heard Mr.Satish Mande for the petitioner and Ms.Megha Bajoria for the respondent.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. The challenge in this petition is to the order dated 19-10-2016 by which the learned Trial Judge has awarded interim maintenance of Rs.10,000/- to the respondent.

4. Mr.Mande, the learned counsel for the petitioner submits that for health reason, the petitioner, could not file any reply to the application seeking interim maintenance. As a result, the impugned order, notes that the application seeking interim maintenance has gone unchallenged. He points out that the petitioner is the delivery boy and will not be in a position to bear interim maintenance of Rs.10,000/- per month.

5. Ms.Bajoria, the learned counsel for the respondent submits that the petitioner was duly served and there was no good reason for not filing any reply or opposing the application for grant of interim maintenance. She submits that there is no case made out to interfere with the impugned order.

6. From the perusal of the impugned order, it appears that the same has been made on the sole ground that the application seeking interim maintenance has gone unchallenged. The petitioner has placed on record certain medical documents, on the basis of which, some leniency, can be shown to the petitioner for his failure to file reply to the application seeking interim maintenance. That apart, Mr.Mande, the learned counsel for the petitioner points out that petitioner has complied with the directions issued by this Court

in its order dated 13th October 2017. The directions required the petitioner to deposit 50% of the arrears of interim maintenance.

7. Taking into consideration the peculiar circumstances of the case, the interest of justice will be met if this petition is disposed of by granting an additional opportunity to the petitioner to contest the proceedings seeking interim maintenance. In the meanwhile however, the respondent, can be permitted, to withdraw the amounts deposited by the petitioner both before this Court as well as the Trial Court and further, directions are issued to the petitioner to pay to the respondent by way of ad-interim maintenance an amount of Rs.5,000/- per month until the interim maintenance amount is determined by the learned Trial Court after afford of opportunity to both the parties.

8. This petition is accordingly disposed of with the following order :-

ORDER

a) The impugned order dated 19-10-2016 is set aside;

b) The petitioner is granted liberty to file reply

to application seeking interim maintenance. Such reply to be filed within two weeks from today, if not, already filed;

c) The respondent is granted liberty to file rejoinder within a period of two weeks thereafter;

d) The Trial Court, to reconsider the application/prayer for interim maintenance on its own merits and in accordance with law;

e) Such application/prayer for interim maintenance to be disposed of by the Trial Court as expeditiously as possible and in any case within a period of three months from today;

f) The respondent shall be at liberty to withdraw the amounts deposited by the petitioner both before this Court as well as the Trial Court unconditionally;

g) The petitioner to pay to the respondent, without prejudice to his rights and contentions, ad-interim

maintenance at the rate of Rs.5,000/- per month. This will be until the determination of interim maintenance by the Trial Court;

h) It is made clear that this Court has not examined merits of the matter and therefore, all contentions of all parties are left open to be determined by the Trial Court.

9. Rule is disposed of in the aforesaid terms.

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

(M. S. SONAK, J.)