Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2288 OF 2016

Shekhar Pandharinath Pokale,	]	
Age about 29 years,	]	
Occ. Agriculture and Business,	]	
R/at : At Post Dhayari,	]	
Near Pokale Primary School,	]	
Survey No.153, Pune.	]	.... Petitioner
Versus		
Sapana Shekhar Pokale,	]	
Age about 25 years,	]	
Occ. Housewife,	]	
R/at 279, Loni Kalbhor,	]	
Tal. Haveli, Dist. Pune.	]	
Also R/of C/o. Pradeep Narayan Kalbhor,	]	
Owner of Shubham Mangal Karyalaya,	]	
Loni Kalbhor, Jal Haveli,	]	
Barkar Vasti, Near Matiwala, Dist. Pune.	]	.... Respondent

Mr. Bharat J. Avasarmore for the Petitioner.

Mr. Sachin R. Pawar for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH OCTOBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the Petitioner and Respondent.

2. By this Petition, filed under Article 227 of the Constitution of India, Petitioner-husband is invoking extra-ordinary writ jurisdiction of this Court to challenge the order dated 15th December 2015 passed by Family Court No.5, Pune, below Exhibit-14 in P.A. No.1042 of 2014, thereby directing the Petitioner to pay the amount of Rs.25,000/- per month to the Respondent-wife from the date of filing of the application till decision of the main Petition for nullity of marriage. Further, Petitioner is also directed to provide one BHK self-contained flat in Pune to the Respondent-wife or to pay Rs.15,000/- per month as rent to her from the date of filing of the application till decision of the main Petition.

3. The submission of learned counsel for the Petitioner is that, the marriage of Petitioner and Respondent has taken place on 15th November 2013 and within two months thereafter, Respondent-wife has left him and, that too, without consummation of marriage. Therefore, Petitioner is constrained to file Petition for nullity of

marriage on the ground of non-consummation of marriage. Thereafter, immediately, the Respondent-wife has filed application under Section 24 of the Hindu Marriage Act for interim maintenance, claiming it at the rate of Rs.1,00,000/- per month. It is submitted that, the Trial Court, after taking into consideration the income of the Petitioner's brother and his family and the assets, which were standing in the name of the Petitioner's brother, has allowed the said application and granted interim alumni @ Rs.25,000/- per month.

4. According to learned counsel for the Petitioner, the Petitioner is merely doing the business of transport of sand and stones and having two Dumpers. His Income Tax Returns of the Years 2013-14, 2014-15 and 2015-16 are produced on record, to show that his annual income is around Rs.3,00,000/- to Rs.4,00,000/- only, and therefore, when he is not earning more than Rs.20,000/- to Rs.25,000/- per month, he cannot be in a position to pay the amount of Rs.25,000/- per month, as awarded by the Trial Court towards interim maintenance. It is urged that, the Trial Court has, merely having regard to the fact that the brother of the Petitioner is a Builder and owner of Athashree Construction Group and also the

owner of various cars, like Audi, Fortuner, Innova, Mercedez Benz, Swift etc., granted the amount of maintenance at the rate of Rs.25,000/- per month. Hence, it needs to be quashed and set aside.

5. Per contra, learned counsel for the Respondent has supported the impugned order by pointing to the material, which was produced before the Trial Court, showing that the Petitioner is very much the part of the family business of construction and only for the purpose of avoiding the liability to pay amount of maintenance to the Respondent, he has created the documents showing that he is no more the part of the family business and having his own independent business. According to learned counsel for the Respondent, having regard to the financial status and life-style of Petitioner and his family, the impugned order passed by the Trial Court, granting interim maintenance of Rs.25,000/- per month, is already on the lower side and the Respondent is even entitled to enhanced amount of maintenance and Respondent is moving in that direction before the Trial Court. In sum and substance, the submission of learned counsel for the Respondent is that, there is no merit in this Writ Petition and, therefore, the same needs to be dismissed.

6. Perusal of the impugned order passed by the Trial Court reveals and it is also an admitted position that, Petitioner's brother is running the construction business in the name of Athashree Construction Group and he is having 47 Acres of plot in Pirangut and Shivapur. The projects called "Samarth" at Survey No.63, Bhugaon, Mulshi, Pune; "Athashree Landmark" at Survey No.155, Kasar Amboli, Shinde Wadi, Mulshi, Pune; "Tamarind Park" at Survey No.53/1/1A/1A/1/1, near Dhayareshwar Temple, Dhayari, Pune; "Swarali" at Survey No.14, Lane No.32B, near Moti Baker, Dhayari, Pune and one and two BHK flats in P.C.M.C., Pune, are under construction. The Petitioner is, admittedly, running the business of supplying sand and stones for the building construction purposes. He is already having, as can be seen found reflected in the Income Tax Returns, two Dumpers.

7. The Respondent has also given, before the Trial Court, the details of four-wheeler vehicles, like Audi Q-7 MH-12/0011 running to the price of Rs.90,00,000/-; Fortuner MH-12/0011 of the worth Rs.28,00,000/-; Swift Desire MH-12/5877 for about Rs.10,00,000/-; Innova MH-12/0011 for about Rs.16,00,000/-; and the Cruiser for about Rs.1,50,00,000/- etc.

8. It may be true, that none of these vehicles or the projects are standing in the individual name of the Petitioner, but then the Petitioner cannot deny that he is very much the member of an undivided family and if it is so, then, as observed by the Apex Court in the case of *Manish Jain Vs. Akanksha Jain, CDJ 2017 SC 352*, it has to be held that, *"it has now become a matter of routine that as and when an application for maintenance is filed, the non-applicant becomes poor displaying that he is not residing with the family members, if they have a good business and movable and immovable properties, in order to avoid payment of maintenance. Courts cannot, under these circumstances, close their eyes when tricks are being played in a clever manner."*

9. In such situation, as held by this Court also in number of its authorities, the Income-Tax Returns do not reflect the true income of the parties. Hence, the ascertainment of the income has to be done judicially and sensibly and not arbitrarily or only arithmetically. In consideration of income contemplated under these proceedings, cognizance need not be restricted to only the numerical figures shown in the Income Tax Returns, nor can such figures be taken for the gospel. The Court is required to take into consideration the

attendant circumstances, before the figures stated in the Income Tax Return are accepted as they stand.

10. Here in the case, even a cursory glance to the various properties owned by the family of the Petitioner, of which he is very much a part, as doing the same business of transporting sand and stones, which is an integral part of the construction business, shows the financial status and life-style of the Petitioner and his family to be very affluent. All the documents, which Petitioner has produced on record, showing that he is separate from the family, pertain to the post-separation of Petitioner and Respondent. The Retirement Deed from the Partnership Firm of the Athashree Construction Group and the Relinquishment Agreement of Partnership is dated 1st April 2014 i.e. after some document in writing is obtained from the Respondent about separation, which is dated March 2014. Therefore, on the face of it also, it is apparent that the Petitioner has, only with an intention and oblique motive of avoiding payment of just maintenance to the Respondent, not left a stone unturned to conceal and hide his real income.

11. The Trial Court has also considered, in paragraph No.7 of its

order, as to how even after the alleged retirement of the Petitioner from Athashree Developers on 1st April 2014, the Bank Statement of the Account of the Petitioner dated 1st September 2014 shows that the amount of Rs.9,00,000/- has been credited in his account by Athashree Developers. This entry clearly goes to show that the Petitioner, even after the alleged retirement, was getting the income from the said business.

12. Thus, when the entire material available on record clearly goes to reveal that the Petitioner is very much the part and parcel of the family business and all the documents showing his separation are created only as an eye-wash and as the family business seems to be running in a very flourishing way, which can be seen from the details of the cars and properties owned by the family and also the various construction projects undertaken are in progress in Pune, the amount of interim maintenance, as awarded by the Trial Court to the Respondent @ Rs.25,000/- per month, can hardly be called as unreasonable, unconscionable or exorbitant, so as to warrant interference therein in this writ jurisdiction. The Writ Petition is, therefore, devoid of merits and, hence, stands dismissed.

13. At this stage, learned counsel for the Petitioner submits that, now the proceedings before the Trial Court are at the stage of recording of evidence. The matter is pending since the year 2014. Hence, it may be expedited. I am sure that the Trial Court will decide the same as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order; provided both the parties and their learned counsel extend co-operation and not seek adjournments on flimsy grounds.

[DR. SHALINI PHANSALKAR-JOSHI, J.]