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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION No.4 of 2017
IN
CIVIL APPLICATION No. 280 of 2015
IN
FAMILY COURT APPEAL No.135 of 2010

Mayur Jaswantray Doshi ..Petitioner.
Vs
Rupal Mayur Y. Doshi ..Respondent.

Mr. Rashid Khan a/with Rutvi Bhatt i/by Manoj Bhatt, for the Petitioner.
Mr. C.N. Chavan a/with Manoj Man for the Respondent.

CORAM : V.M. KANADE &
C.V.BHADANG,JJ.
DATED : 28th April, 2017.

ORDER: (Per C.V. Bhadang,J)

1) This is an application for review of the order dated 28th November, 2016 in Civil Application No. 280 of 2015 by which maintenance granted to the respondent/wife and two children is enhanced to Rs.25,000/- per month from the date of the order. This was by way of an ad-interim relief.

2) The marriage between the parties has been dissolved by a decree of the Family Court in the year 2010. The Family Court had granted maintenance @ Rs.7,000/- per month to the respondent/wife and two children, who are presently said to be aged about 13 to 15 years.

3) This Court in the order dated 28th November, 2016 had noted that the income of the applicant/husband was Rs. 46 lakhs for the year 2005-06 i.e. a year before the application for maintenance was filed by the respondent/wife. However, the income of the review petitioner is shown to be drastically reduced to Rs. 2 lakh per year for the subsequent year. This Court had noted that an adverse inference will have to be drawn against the review petitioner for not showing correct income. The income-tax returns by themselves do not indicate the true income as it is possible to manipulate the accounts for the purpose of avoiding payment of tax and/or maintenance.

This Court further noted that if the Court comes to the conclusion that there is an attempt not to disclose the real income, then adverse inference can be drawn. This Court after considering the statement of expenses as incurred by the respondent-wife for the purpose of her maintenance and that of the two children who are presently studying, found that it would be appropriate to enhance maintenance to Rs.25,000/- per month by way of an ad-interim relief. This was to be effective from the date of the order. The applicant was directed to file his income-tax returns from the year 2000-2001 to 2005-2006 along with the returns of his brother and to disclose on oath whether the applicant and his brother are carrying on joint family business.

4) According to the review petitioner, the income as noticed by this Court of Rs.46 lakhs per year is incorrect as it is the total turnover for the year 2005-2006 while the actual income is

approximately Rs.86,000/-. It is submitted that it is an error apparent on the face of the record, which needs to be corrected.

5) It may be mentioned that by an order dated 17th April, 2017 this Court had directed the petitioner to pay the maintenance @ Rs.15,000/- per month from the date of the order for the time being during the pendency of the review petition.

6) We have heard the learned counsel for the petitioner and the learned counsel for the respondent.

7) It is submitted by the learned Counsel for the petitioner that upto the year 2006 the petitioner was doing business in the name and style as M/s Tirupati Enterprises, which now he has stopped. The petitioner joined an Architect's firm and was doing supervising work from 2007 till 2010. He has left the said job and from the year 2011 has started work of site supervision. From the year 2011 to 2016 his income has steadily grown from Rs.2.15 lakhs to Rs.2,25,000/-, out of

which he spend Rs.86,000/- per annum as maintenance to the respondent apart from incurring expenses for paying his own Advocate's fee and travelling expenses, etc. It is submitted that the income as reckoned by this Court at Rs.46 lakhs per year is not correct and, therefore, the order dated 28th November, 2016 needs to be reviewed and appropriately modified.

8) On the contrary, it is submitted by the learned counsel for the respondent-wife that the income-tax returns do not show the correct income of the petitioner. It is submitted that there is nothing on record to show that the petitioner has stopped his business as Tirupati Enterprises. It is submitted that in the order dated 17th April, 2017 this Court has found that it is difficult to accept that though the net income of the petitioner is shown as Rs.86,000/- in the year 2005-06, he has paid Rs.22 lakhs as labour charges. It is submitted that the order sought to be reviewed is not solely based on the income as shown in the year 2005-06.

9) We have carefully considered the rival circumstances and the submissions made and we find that no case is made out for reviewing the order. In the order dated 28th November, 2016 this Court had found that an adverse inference needs to be drawn against the review petitioner for not showing his correct income. This is apparent from the fact that although in the year 2005-06 the petitioner has shown to have earned Rs.86000/- as net income, he claims to have paid Rs. 22 lakhs as labour charges, which, in our view, is not acceptable. The maintenance of Rs.7000/- per month which was granted by the Family Court in the year 2010, after which there is substantial escalation of the prices and the living expenses. The quantum of maintenance depends on the need of the wife and children who are of growing age and the capacity of the husband to pay such maintenance. It is well settled that the husband is under a legal and moral obligation to maintain the wife and children and the quantum of maintenance

should be such as to entitle the wife and the children to have the same standard of life as that of the husband. By an order dated 28th November, 2016 the petitioner was directed to file an affidavit along with income-tax returns, also of his brother and to disclose on oath whether the petitioner and the respondent were carrying on joint family business. That affidavit is not filed. In our considered view, this Court was justified in drawing an adverse inference and granting enhancement of maintenance @ Rs.25,000/- per month. It is significant to note that the said enhancement has been granted from the date of the order. We do not find that a case for review is made out. The application is without any merit and is accordingly dismissed.

(C.V. BHADANG,J) (V.M. KANADE,J)