

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2457 OF 2016**

Smt. Dia Nitin Magnani

..Petitioner

Vs.

Shri Nitin Ashok Mangnani

..Respondent

Mr. J. M. Puranik for the Petitioner

Mr. P. P. Runwal for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 16th FEBRUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 22-9-2014 passed by the Learned Judge of the Family Court No.3, Mumbai, by which order, the application Exhibit 14 filed by the Petitioner for interim maintenance came to be partly allowed to the extent of granting maintenance to the Petitioner @ Rs.11,000/- per month.

2 The Petitioner and the Respondent were married sometime in the year 2011 and are now presently estranged. The Petitioner is staying separately from the Respondent. The Respondent 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 Petitioner filed the instant application claiming interim maintenance. It seems that the Petitioner had earlier filed an application for grant of litigation expenses. The said

application was directed to be heard along with the main Petition and it was observed that 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 Petitioner that the Respondent 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 Petitioner that the Respondent 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 Petitioner did not produce any material on record to indicate the actual income of the Respondent. The Respondent filed 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.

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 Respondent who is 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 given 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 draw this courts attention to the photographs of the building wherein the Respondent is residing as also the photographs which were produced before the Trial Court of the Respondent sitting in his shop and the Respondent along side his car.

6 In my view, the said photographs would not prove the income of the Respondent. 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 Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]