

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3753/2017

Nilay Rajendra Shah ... Petitioner
V/s.
Amruta Nilay Shah ... Respondent

Mr. R. V. Govilkar with Mihir R. Govilkar for the petitioner
Mrs. Amruta N. Shah, respondent in person.

CORAM: K.K. TATED, J.
DATED : JULY 28, 2017

PC. :

1. Heard the learned counsel for the petitioner and the respondent party-in-person.

2. By this petition under Article 227 of the Constitution of India, the petitioner husband challenges order dated 06.08.2016 passed by the learned Jt. Civil Judge, Senior Division, Panvel below Exhibit- 5 in HMP No.116/2014 granting maintenance *pendent lite* of Rs.4 lacs p.m. as alimony u/s.24 of the Hindu Marriage Act, 1955 (said Act) read with section 20 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) to the respondent wife.

3. Few facts of the matter are as under:

The petitioner was an Indian National and now he is a citizen of United States of America (USA). The petitioner and respondent got married on 16.02.2013 as per the Hindu Vedic rites and rituals at Vadodara, Gujarat. Because of some disputes between the parties, the respondent filed HMP No.116/2014 before the Civil Judge, Senior

Division, Panvel u/s.9 of the said Act for restitution of conjugal rights. In that petition, the respondent had also made an application for interim maintenance of Rs.4 lacs pm, considering the standard of living and earning of the petitioner. The respondent wife has specifically pleaded in paragraph 10 of her marriage petition that the petitioner is working with Burger King Corporation, Mayami Co. in America and he is getting salary to the extent of Rs.10 lac pm. The petitioner has also a liquor shop in USA which gets him additional income. The petitioner also has a residential premise which he has let out and getting approximately Rs.2 lac pm.

4. The respondent wife made an application below Exhibit- 5 u/s.24 of the said Act in HMP No.116/2014 claiming interim maintenance during pendency of the main petition u/s.9 of the said Act @ Rs.4 lacs pm. The petitioner has filed his reply dated 17.01.2015 opposing the interim maintenance on the ground that the respondent wife herself is working with Bombay Fluid System Components Pvt. Ltd. and getting salary of Rs.70000/- pm. The petitioner has also stated in his reply that he has made an application for divorce in the circuit court of the 11th Judicial Circuit in and for Miami-Dade County, Florida being case No.2014-012235-FC 04. The final judgment of dissolution of marriage was passed by that court on 02.05.2016. Thereafter the respondent wife preferred an appeal wherein the appellate court passed order dated 29.03.2017 remanding the matter to the trial court to fix the maintenance amount to be awarded to the respondent wife. As on today, the competent court in USA has passed the decree of divorce between the petitioner and the respondent and hence the petition filed

by the respondent wife u/s.9 of the said Act for restitution of conjugal rights itself is not maintainable. Therefore, the impugned order by which the trial court has directed the petitioner to pay sum of Rs.4 lacs pm by way of maintenance is liable to be set aside.

5. The learned counsel for the petitioner submits that the petition u/s.9 filed by the respondent is not maintainable in law. He submits that the petition u/s.9 for restitution of conjugal rights filed by the respondent wife at Panvel is not maintainable for want of jurisdiction. He submits that before few days of filing the petition u/s.9 of the said Act, the respondent herself has admitted in her complaint to the police that she was at Vadodara, Gujarat. He further submits that though the respondent in her petition u/s.9 of the said Act stated that her parents are staying at Panvel, it is not correct. He submits that the respondent, in her petition u/s.9 of the said Act, in para 4 stated that she herself does not have any residential accommodation, hence, she is staying at her parents' address at Panvel, is not correct. He submits that even the respondent wife made an incorrect statement in her petition in para 16 that the petitioner and the respondent lastly resided in Panvel and therefore the Panvel court has jurisdiction. He submits that for last several years, even before the marriage, the petitioner is staying at USA. The respondent does not have any residential proof to show that the petitioner was at Panvel. On this count also, the impugned order passed by the trial court directing to pay the maintenance charges to the respondent is liable to be set aside.

6. The learned counsel for the petitioner submits that the trial

court has erred in coming to the conclusion that the respondent wife is entitled to maintenance @ Rs. 4 lac p.m. from the petitioner. He submits that the trial court has completely neglected that in the affidavit/application dated 27.07.2016, the respondent claimed fanciful and total unrealistic and absurd claims. He submits that the respondent wife is residing alone at her parents' flat and still claims expenses for organic food Rs.25000/- pm, medical expenses Rs.15000/- pm, grocery and home supplies Rs.15000/-, Rs.25000/- home rent, Rs.10000/- household repairs and maintenance, Rs.15000/- parlour expenses, Rs.40000/- legal fees, Rs.90000/- for traveling from Baroda to Mumbai four times by Air, Rs.15000/- daily necessities (clothing, shoes, cosmetics etc.), Rs.5000/- for local and international phone bills, Rs.15000/- monthly misc. household expenses. The total comes to Rs.2,70,000/- which itself is highly exaggerated. The petitioner claims Rs.4 lacs pm by way of maintenance charges and same is allowed by the trial court. He submits that the trial court has failed to consider the fact that though the respondent claims maintenance charges at Rs.4 lac pm, she has failed and neglected to produce on record any documentary evidence to show that the petitioner husband is earning more than Rs.10 lac pm. He submits that though the respondent wife was working at Vadodara and was earning near-about Rs.70,000/- pm. the trial court has erred in coming to the conclusion that the wife is entitled to Rs.4 lac pm. by way of maintenance charges excluding the amount if any, paid under the provisions of the D.V. Act.

7. The learned counsel for the petitioner submits that the observation of the learned Judge that the petitioner herein had

concealed the documents pertaining to his income, is factually incorrect. He submits that assuming without admitting emphatically the correctness of the allegation about the income of the petitioner, it ought to have been appreciated and held that the mere factum of income of the husband is not the only and decisive factor to determine the amount of maintenance or interim maintenance. He further submits that the observations of the Learned Judge as regards to the circumstances under which the Petitioner had to resign on account of the repeated allegations and complaints to his employer at USA by the respondent with utmost respect do not reflect a proper, correct and knowledgeable appreciation of facts. The Petitioner being a USA citizen, if gets termination of service, it is reflected in his service record and it makes it extremely difficult thereafter to get a job, with a stigma of termination. The Learned Judge ought to have appreciated that a termination of service even in India is considered a stigma or blot on the service record of an employee which makes it very difficult for him to get a job. The same thing had happened with the Petitioner. The observation of the Learned Judge is that the Petitioner had resigned from his service only to avoid paying maintenance to the respondent is only out of an incorrect and improper appreciation of fact, to say the least. With greatest respect the Learned Judge had completely failed to appreciate the significance of the resignation on the back ground of the circumstances under which he had resigned. The documents of the respondent contacting petitioners employers will be relied upon when produced. He submits that the learned Judge has merely relied upon theoretical position of the rights of the wife being entitled to have a right to live as per standard of living of her husband

and only considering the alleged income of husband ignoring completely the very further observation and decision and the position in law, which is mentioned in paragraph 19 of the judgment that the wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home.

8. The learned counsel for the petitioner relies on an Indian Income Tax Returns Verification form for the year 2013-2014 showing the respondent's wife's total income of Rs.3,08,493/- for A.Y. No.2014-2015, Rs.1,85,545/- for A.Y. 2014-2015, Rs.5,04, 084/- for A.Y. 2015-16. He submits that the Swagelok, Bombay Fluid System Components Pvt. Ltd., where the respondent was working, has issued salary certificate for the month of October, 20015 and November, 2015 showing the net salary of Rs.31807/-. He submits that these facts were not considered by the trial court at the time of granting maintenance charges to the respondent. He submits that it is well settled principle that if the opponent i.e. the respondent wife in the matter in hand is earning, then she is not entitled to any monthly maintenance. On the basis of this submission, the learned counsel for the petitioner submits that the impugned order is liable to be set aside with directions to the trial court to decide the petition filed by the respondent u/s.9 of the said Act as early as possible.

9. The learned counsel for the petitioner submits that apart from all these submissions, the petitioner had filed an application dated 08.06.2017 for dismissal of the petition for want of jurisdiction. He submits that during pendency of the application made by the petitioner

for dismissal of the HMP filed by the respondent u/s.9, the trial court ought to have stayed the matter.

10. On the other hand, the respondent-in-person vehemently opposed the Writ Petition. She submits that though the trial court has passed the order on 06.08.2016, the petitioner has failed and neglected to comply with the same. She submits that the petitioner is habitual for not complying with any order passed by the Courts. She submits that in the present proceedings, before the Civil Judge, Senior Division, Panvel, she had made an application for production of documents in application No.116/2014 on 21.11.2015 for following documents :

- “(i) Income Tax return of past three years.*
- (ii) The details of the properties purchased and owned by respondent along with agreements.*
- (iii) Bank Statement of the assessment years 2013 to 2015*
- (iv) Agreement copies of the rented flats (USA and Baroda)*
- (v) Audit reports for past 3 years of Arpita Polymers at Baroda and liquor store in USA”*

11. The respondent submits that the said application was allowed by the trial court by order dated 29.03.2016. In spite of that the petitioner has failed and neglected to comply with the same by not furnishing those documents. Hence, the trial court has passed the order dated 21.06.2016 below Exhibit- 1 in HMP No.116/2014 directing the petitioner to comply with the earlier order, failing which his defence would be struck off in pending case. She submits that thereafter the trial court passed one more order below Exhibit- 35 in HMP No.116/2014 directing the petitioner to furnish details regarding his

present residential address and present place of work within 8 days. She submits that pursuant to the said order, the advocate for the petitioner filed *pursis* before the trial court stating, it is not possible for him to disclose the name and address of the petitioner's employer. On that *pursis*, the trial court passed the order dated 17.02.2017 which reads thus:

“The respondent is directed to remain in court in person in order to examine under Order X of the Code of Civil Procedure, 1908 and for compliance of order on 23.02.2017.”

12. The respondent in person submits that she had made an application below Exhibit- 67 in the said proceedings for medical expenses which was allowed by the trial court directing the Protection Officer appointed under the D.V. Act to help the respondent. She submits that the Protection Officer submitted his report stating that the cost of medical expenses will be more than Rs.2,25,000/-. She submits that in spite of these facts, the petitioner has failed and neglected to comply with the said order for providing financial assistance for medical expenses. He submits that the respondent had made an application below Exhibit- 50, 51 and 53 in HMP No.116/2014. She submits that the application below Exhibit- 50 was for several reliefs i.e. for direction to the U.S. Consulate to provide the petitioner husband's residential as well as work address etc. The application Exhibit- 51 was for issuance of arrest warrant against the petitioner and application Exhibit- 53 was for recovery of maintenance charges awarded by the court. She submits that at the time of passing common order dated 20.04.2017 the Civil Judge, Senior Division, Panvel struck down the petitioner's defence in HMP No.116/2014 as per Order XXXIX

Rule 11 of the Code of Civil Procedure, 1908. Clause (G) of order dated 20.04.2017 reads thus :

“(G) Defence of respondent shall stand struck off vide Order XXXIX Rule 11 (Bombay Amendment) of the Code of Civil Procedure, 1908 for the non compliance of the order below Exhibit- 5 for a long time and for the disobedience of the court orders passed.”

13. The respondent party in person submits that she had made an application below Exhibit- 52 in HMP No.116/2014 for restoration of her Stridhan and interim residence. After hearing both sides the trial court allowed the said application with following directions.

“(1) Issue interim protection order restraining respondent from engaging himself in any act of domestic violence including his act of transferring/alienating his proprietary assets, his act of omitting to disclose the particulars of his assets and liabilities as well as his employment details as ordered to be disclosed and his act of staying away from and beyond the reach of Indian court process and Indian Borders to the prejudice of applicant/petitioner thereby frustrating her efforts to realize the fruits of Indian Court order as to maintenance till further order.

Respondent is further restrained by way of this interim protection order from omitting himself to cause his physical appearance in this court in view of the earlier order passed by this court directing him to appear in the court, till further order,

(2) Respondent shall restitute the “Stridhan” of the petitioner to the extent of 75 (Seventy five) tolas [750(seven hundred fifty) grams] gold and he is restrained by way of interim protection order from engaging in his activity of hiding the said Stridhan" or keeping the same so as to make it impossible to searched or found out.

In case of loss of "Stridhan", respondent shall pay an interim compensation in the amount of price of the "Stridhan" i.e. 75 (Seventy five) tolas as on the date of realisation, within the meaning of Section 22 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005.

(3) The prayer for interim residence order stands rejected with liberty to petitioner to take appropriate recourse and appropriate remedy regarding her right of residence in the share household in view of the order passed by the learned Magistrate in the light of aforesaid observations in this order.

(4) Issue copy of this order, free of costs, to the parties as per Section 24 of the Protection of Women from Domestic Violence Act.2005,

(5) Issue copies of this order to the protection officers and the police stations concerned, within the jurisdiction of which, the applicant/petitioner resides, respondent resides or both of them resided together in a common house a Vadodara, or where the "Stridhan" is likely to be existing.

(6) Costs of application to the tune of Rs.5000/- be paid by respondent to applicant / petitioner."

14. The respondent in person submits that in spite of order dated 05.06.2017, the petitioner husband has failed and neglected to return "Stridhan" and to comply with all formalities. The respondent submits that the above mentioned facts clearly show that the petitioner did not bother to obey the orders passed by the court at all.

15. The respondent submits that earlier, she was working but now because of all these litigations, it is very difficult for her to concentrate on her work. She submits that she is not earning more than Rs.35000/-

pm. She submits that considering the status of the petitioner it is impossible for her to maintain herself with a meager amount of Rs.35000/- pm. She submits that the quantum of maintenance should be adequate so as to enable the wife to lead a life with dignity similar to the standards with which she would have lived in her matrimonial home. She submits that as on today, the petitioner is earning near-about Rs.10 lac pm and considering these facts, the trial court has rightly directed to pay sum of Rs.4 lac p.m. to her. She submits that the petitioner, neither appearing before the trial court nor complying with the orders passed by the court from time to time. This itself shows that the petitioner is intentionally avoiding to obey the orders passed by the court. She submits that the petitioner husband is raising unnecessary objections for payment of maintenance charges to her.

16. The respondent submits that the trial court, after considering several judgments of the apex court, held that the application made by her for maintenance is maintainable though the petitioner husband has filed an application for divorce in foreign court.

17. On the basis of the above mentioned submissions, the respondent in person submits that there is no substance in the Writ Petition and same is liable to be dismissed with costs.

18. Heard both sides. At the outset, it is to be noted that, the petitioner has raised several objections about maintainability of the petition filed by respondent u/s.9 of the said Act and application for maintenance and other applications which were decided in favour of

the respondent wife. Now, in the present proceedings, the application made by the respondent was allowed by the trial court by order dated 06.08.2016 directing the petitioner to pay Rs.4 lacs pm. At the time of passing the impugned order, the trial court has considered the documentary evidence on record and the income of the petitioner. The trial court has specifically recorded in the order that the petitioner is working in USA and having good salary and income from other sources i.e. rent, wine shop etc. The petitioner has failed to place on record salary certificate and/or any other documentary evidence to show his monthly income from all source i.e. service, rented premises and wine shop etc. It is to be noted that, at the time of deciding the quantum of the maintenance payable, it is to be considered that the wife should live with dignity similar to the standards of her husband etc. The apex court, in ***Shamima Farooqui Vs. Shahid Khan (2015) 5 SCC 705*** held that it is the duty of the husband to provide adequate maintenance charges to the wife so that she can maintain similar standard as of the husband's family. Para 14 to 19 of the said judgment read thus:

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs.17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of

sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Cr.PC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. 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, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.*(1997) 7 SCC 7 has held as follows:-

“8.The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316, it has been ruled that:-

“6.....“Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636.”

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash* AIR 1968 Delhi 174 wherein it has been opined thus:

“An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband

does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

19. The objection raised by the advocate for the petitioner is that, the foreign court has already passed decree for divorce and therefore, the respondent is not entitled to any maintenance and the impugned order is required to be set aside. It is to be noted that, the foreign court has passed the decree of divorce on the ground of “irretrievably broken”. Paragraph 3 of the said order dated 22.08.2014 reads thus:

“The bonds of marriage between the petitioner, Nilay R. Shah and the respondent, Amruta Patel, are irretrievably broken. Therefore, the marriage of the parties is dissolved and the parties are restored to the status of being single.”

20. It is to be noted that, the grounds under which divorce can be granted are given under section 13 and 13-B of the said Act.

21. The ground on which the petitioner obtained divorce in USA, whether same can be executable in India or not can be decided by the trial court at the time of final hearing of the HMP. Therefore, on this

ground, the impugned order cannot be set aside. Before one and half month i.e. 08.06.2017, the petitioner has made an application for dismissal of the petition before the Civil Judge, Senior Division, Panvel, Dist. Raigad in HMP No.116/2014 with following prayers:

- “(a) reject/dismiss the HMP 116/2014.*
- (b) pass any other order, which is fit, proper and in the interest of justice.*
- (c) pass order for costs of this application*
- (d) the application signed by the pleader of the respondent who has filed the application may kindly be taken on record and leave/permission be granted to submit an affirm copy of the application, at a later date, on receipt of such an application from USA.”*

22. Considering the fact that though the petitioner has financial capacity to pay sum of Rs.4 lacs p.m. to the respondent towards maintenance charges, he has failed and neglected to do so. During the course of arguments, this court had suggested the petitioner whether the petitioner is ready and willing to deposit amount in court, his advocate has flatly rejected the same only on the ground that, divorce has taken place between the respondent and the petitioner and therefore, there is no question of payment of any maintenance charges to her.

23. It is to be noted that, whether the petition is maintainable or not, has to be decided at the time of final hearing of the main petition before the trial court. Apart from that the petitioner has filed application dated 08.06.2017 for dismissal of HMP No.116/2014

on the ground of jurisdiction etc. That application is also pending for final disposal on merits.

24. Considering the fact that in spite of having financial capacity to pay maintenance charges, the petitioner is avoiding to do so on one or the other ground. He is not ready to disclose the name and address of the company with whom he is working and how much he is earning etc., I am of the opinion that the petitioner has failed to make out any case to set aside the impugned order which is in the nature of interim order till hearing and final disposal of the HMP No.116/2014 filed u/s.9 of the said Act.

25. Considering the facts and circumstances of the present case, in the interest of justice, it is necessary to expedite the hearing and final disposal of the HMP No.116/2014 filed by the respondent wife.

26. Hence, following order is passed:

- a. Writ Petition stands rejected with costs.
- b. Hearing and final disposal of HMP No.116/2014 pending before the Civil Judge, Senior Division, Panvel, Dist. Raigad is expedited.
- c. This court expects that the trial court would decide the HMP No.116/2014 and pending applications, if any, as early as possible but in any case on or before 31.03.2018 on its own merits.

(K.K. TATED, J.)