

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4303 OF 2017**

Mrs.Jilpa Jignesh Gala

...Petitioner

Vs.

Jignesh Damji Gala

..Respondent

Ms.Firdaus Moosa i/b. Mr.Prakash Mahadik for Petitioner.

Ms.Devika Deshmukh with Ms.Shetty i/b. M/s.ANB Legal for Respondent.

CORAM : G.S. KULKARNI, J.**DATE : 15th DECEMBER, 2017****P.C.:**

By consent, heard finally.

2. Perused the impugned order dated 4th January 2017 by which the application of the petitioner/wife filed below Exhibit 12 seeking interim maintenance stands rejected. The reasoning as set out in paragraphs 7 to 9 of the order, in my opinion, is wholly unjustified and only on presumptions. Learned Judge of the Family Court ought to have applied himself to the reality and the facts placed on record and with a more sensitive and human approach in dealing with the interim maintenance application of the petitioner. Admittedly, it is not the case of the respondent-husband that the petitioner was well placed in employment or that she was drawing sufficient salary which could enable the Court to reject the application of the petitioner. Learned Judge ought to have been more conscious of the employment scenario and the market conditions under which the petitioner could have struggled to get

an employment. It cannot be presumed that merely some person has good qualifications, there is a guarantee of employment.

3. The reasons as attributed to dismiss the application are therefore wholly surmises or mechanical and unjustified. The impugned order is accordingly required to be set aside. Ordered accordingly.

4. The matter is remanded back to the Family Court. The learned Judge taking up the application shall decide the same *denovo* after taking into consideration the materials and facts as would be placed on record on behalf of the parties. Needless to observe that a fresh order on merits and after hearing the parties, be passed without being influenced by the impugned order.

5. The ad-interim application be decided as early as possible within a period of three months from today. However, as so far no interim maintenance is paid to the petitioner, this would not preclude the petitioner from moving an ad-interim application for fixing interim maintenance.

6. All contentions of the parties on merits are expressly kept open.

7. Writ Petition is allowed in the above terms.

8. The parties are at liberty to file further fresh affidavit/documents, if they so desire before the Family Court.

[G.S. KULKARNI, J.]