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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11985 OF 2016

Vijay Dhondiram Ghadage	]	
age: 43 years, residing at Pathardi Phata	]	<u>Petitioner.</u>
Vrundavan Bungalow, Plot No.26	]	Original
Vasan Nagar, survey No.908/3	]	Petitioner
Nashik, Tal. & Dis. Nashik	]	

V/s.

1.State of Maharashtra	]	
	]	
2. Mrs.Rupali Vijay Ghadage	]	<u>Respondents.</u>
c/o Mohan Shridhar Kale	]	Respondent No.2
at Athavan Bungalow, House No.910	]	Original
Kanade Mala Sinner, Tal.Sinner	]	respondent.
Nashik	]	

Mr. Chetan S. Damre, for the petitioner.
Mr. Swapnil Mhatre i/by Mr. Rajan S. Pawar, for
respondent No.2.
Mr. J. A. Madane, AGP for the Respondent No.1
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 12th OCTOBER, 2017.

JUDGMENT.

1] Heard learned counsels for the petitioner and
respondents.

2] Rule.

3] Rule made returnable forthwith with the consent of parties.

4] This writ petition is preferred by the petitioner husband, challenging the order dated 25.01.2016, passed by the Family Court, Nashik in P.A. No.52 of 2014, thereby allowing the respondent's application for interim maintenance filed under section 24 of the Hindu Marriage Act and granting her Rs.3,000/- per month from the date of application, Rs.5,000/- towards litigation expenses, plus Rs.100/- per trip when she remains present in the court towards her travelling expenses.

5] The submission of learned counsel for the petitioner is that respondent is more qualified than the petitioner as she is double graduate i.e. M.A. whereas petitioner is merely a graduate in Arts. Secondly, it is submitted that the earning of the petitioner is only Rs.7,000/- per month from his service as clerk in a private company. Thirdly, it is submitted that respondent has not produced any documentary evidence to prove the income of the petitioner. Despite

that the trial Court has awarded maintenance of Rs.3,000/- per month.

6] An attempt is also made to contend that respondent herself does not want to cohabit with the petitioner unless he resides separately from his parents and therefore, she can not be entitled to get any amount of maintenance, especially as per her own statement as reflected in the chat of *Whats APP*, she is having earning capacity of Rs.30,000/- per month.

7] Learned counsel for the petitioner, has further submitted that in the proceeding filed under Section 125 of Code of Criminal Procedure, respondent is awarded interim maintenance at the rate of Rs.2,000/- per month and the petitioner is ready to pay the said amount. He is also paying the same regularly. Therefore, the impugned order awarding interim maintenance at the rate of Rs.3,000/- per month passed in this proceeding needs to be set aside.

8] Coming to the various contentions raised by the learned counsel for petitioner, about first contention that respondent is more qualified and having earning capacity of Rs.30,000/- per

month. The law is well settled that merely having earning capacity is not sufficient unless it is shown that wife is actually having some permanent source of income and getting the income. In this respect a useful reference can be made to the decision of Apex Court in case of ***Manish Jain vs. Akanksha Jain, CDJ 2017 SC 352***. In this case, the application for interim alimony filed by the wife was resisted by the husband on the ground that she is an educated lady. While rejecting this contention, in paragraph No.15, the Hon'ble Supreme Court was pleased to hold that:-

“15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the

*claim for maintenance determining the quantum
based on various factors brought before the Court.”*

(Emphasis supplied)

9] In this case, there is no pleading or any material to show that respondent is actually working at some place and having any permanent source of income.

10] As regards the contention that respondent has not produced any documentary evidence about the income of the petitioner, as a matter of fact, it was for the petitioner himself to produce on record, his own salary slip or his income tax returns. However, the petitioner has not done so.

11] According to respondent, petitioner is earning salary of Rs.20,000/- per month and therefore, it was for the petitioner to produce his salary slip or details of income tax return to show that he is not getting salary of Rs.20,000/- per month and getting Rs.7,000/- per month only. Non production of salary slip or income tax returns makes, thus, it necessary to draw adverse inference that the petitioner is getting salary for more than Rs.7,000/- per month

and may be Rs.20,000/- per month. Therefore, he is not producing those documents in the Court.

12] As to the contention that respondent herself has left petitioner's company and she is not ready to join cohabitation with petitioner unless he resides separately; this issue pertains to merits and demerits and the grounds for divorce raised in the petition. It may be stated that if the petitioner really wants to cohabit with the respondent, then petitioner would not have filed petition for divorce, but would have filed petition for restitution of conjugal rights in which efforts would have been made for amicable resolution and for restitution and cohabitation. Therefore, at this stage, this submission holds no merit.

13] About the contention of the petitioner that he is ready to pay and is paying amount of Rs.2,000/- per month as awarded by the court of Judicial Magistrate First Class, Sinnar in Crim. Misc. Application No.557 of 2015 under Section 125 of Code of Criminal Procedure, needless to state that the said amount of maintenance can hardly be sufficient even to satisfy the bare necessities of respondent. Moreover, said order is passed on 10.4.2017 i.e. after

the impugned order is passed in Divorce Petition No.24 of 2014 and therefore, it follows that this amount of Rs.2,000/- per month was granted only as interim maintenance under Section 125 of Code of Criminal Procedure. If one has regard to the standard of living and inflation in the prices of essential commodities, this amount of Rs.2,000/- per month awarded in proceeding under Section 125 of Code of Criminal Procedure, cannot be sufficient having regard to the income of the petitioner which he has not disclosed fairly. Therefore, an amount of Rs.3,000/- per month which is granted by the trial Court to the respondent as interim maintenance in divorce proceeding under Section 24 of the Hindu Marriage Act, being a reasonable sum and not in any way exorbitant or excessive, no interference is justified in the said order in the writ jurisdiction.

14] Writ Petition, therefore, being devoid of merit stands dismissed.

15] Rule discharged.

(DR. SHALINI PHANSALKAR-JOSHI, J.)