

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

WRIT PETITION NO.10227 OF 2017

Anuja Lalit Bhowar)
Hindu, Indian Inhabitant,)
Age : 34 years, Occ.: Housewife)
r/at: 1, Meghalay, N.P. Thakkar Road)
Vile Parle (East), Mumbai – 400 057.) .. Petitioner

Versus

Lalit Prakash Bhowar)
Hindu, Indian Inhabitant)
Age: 36 years, Occ: Service,)
r/at : Room No.401, 4th Floor,)
Saraswati Apartment,)
Near Trimurti Chunabhatti, Sion,)
Mumbai - 400 022.) .. Respondent

Mr.R.T.Lalwani with Mrs.Sadhana Jaikar i/by Mr.Prakash L. Mahadik
for the petitioner.

Mr.Prashant G. Sawant for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 6th November 2017

Judgment :-

. Rule, returnable forthwith. Learned counsel appearing for
the respondent waives service. The petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of
India, the petitioner has impugned the order dated 24th February 2016

passed by the learned Judge of the Family Court No.2, Mumbai rejecting the application filed by the petitioner for seeking interim maintenance for herself and her daughter who is six years old.

3. The petitioner had earlier filed an application for maintenance under the provisions of Protection of Women from Domestic Violence Act, 2005. The same was decided by the Metropolitan Magistrate, 65th Court, Andheri, Mumbai on 7th October 2013 directing the respondent-husband to pay a sum of Rs.7,000/- per month for maintenance from 5th May 2011 till 27th December 2014 and an amount of Rs.3,600/- per month for minor daughter till she attains the age of majority and is married or until further orders. Both the parties had challenged the said order dated 7th October 2013 passed by the Metropolitan Magistrate before the Sessions Court.

4. By an order dated 30th January 2014, the learned Judge of the Sessions Court granted stay to the order dated 7th October 2013 until further orders upon depositing 50% of arrears of amount due towards the petitioner herein from the date of application to till date of the said order. The respondent was further directed to deposit 75% of arrears of amount due towards his daughter from the date of her birth i.e. 27th

December 2011 to till date of the said order. The learned Sessions Judge made it clear that during the pendency of the appeal, the respondent herein to continue to make the payment of maintenance @Rs.6,000/- per month including the maintenance of daughter until further orders. Those proceedings were finally decided and the petitioner and her daughter have been granted maintenance of an amount of Rs.5,000/- per month.

5. Learned counsel for the petitioner submits that the respondent is employed and has been earning at least Rs.55,000/- per month as an income. He invited my attention to the affidavit dated 5th January 2016 filed by the respondent herein in Interim Application No.98 of 2015 and would submit that the respondent had shown his readiness and willingness to pay the Education Expenses of the child from the date of the application. In the said affidavit, the respondent undertook and was ready to pay the future Educational Expenses of the minor child from the date of the said application directly to the school against the receipt or the school diary till the disposal of the application for maintenance.

6. Learned counsel invited my attention to the reasons recorded by the Family Court in the impugned order and submits that interim

application filed by the petitioner is rejected mainly on the ground that while disposing of the proceedings bearing Petition No.A-2273 of 2014, the Sessions Court had already granted an amount of Rs.6,000/- after application of judicial mind and had decided the quantum of maintenance and therefore, it would not be proper to again verify the needs of the respondent and her daughter and income of the petitioner. It is held that the amount of Rs.6,000/- per month as awarded by the Sessions Court was having regard to all the facts agitated by the parties before the family Court and thus no additional amount can be considered.

7. Learned counsel for the petitioner invited my attention to the order passed by the Sessions Court and would submit that while directing the respondent to pay an amount of Rs.6,000/- per month as and by way of maintenance for the petitioner herself and for her daughter, no reasons were recorded by the Sessions Court. He submits that in any event, the applications filed by the petitioner for maintenance under the provisions of Section 125 of the Code of Criminal Procedure as well as the Domestic Violence Act are independent proceedings.

8. Learned counsel for the petitioner fairly brought to the notice of this Court that the petitioner has now obtained a certificate of

practice from Bar Council of Maharashtra in the month of March 2017. Though the respondent had rendered an undertaking in his affidavit dated 5th January 2016 to pay the future educational expenses of the minor child from the date of application till disposal of the application, the respondent has not complied with the said undertaking in toto. He submits that the petitioner has not started any practice though has obtained a certificate of practice from the Bar Council of Maharashtra. In these circumstances, the maintenance being paid by the respondent @Rs.5,000/- per month is totally insufficient considering the rate of inflation.

9. Learned counsel appearing for the respondent, on the other hand, submits that interim maintenance granted by the learned Magistrate in the application filed by the petitioner under the provisions of the Domestic Violence Act was challenged by both the parties. He submits that the Sessions Court had already fixed an amount of Rs.6,000/- per month for the maintenance of the petitioner and her daughter. The said order was not challenged by the petitioner before this Court and thus the learned Family Court was right in relying upon the said order while rejecting the application for interim maintenance filed by the petitioner. He submits that in the proceedings filed by the

petitioner, the learned Magistrate has awarded maintenance of Rs.5,000/- per month and thus no interference with the order passed by the learned Judge of the Family Court No.2, Mumbai is warranted in this petition. Learned counsel for the respondent does not dispute that his client is earning a salary of Rs.55,000/- per month.

10. In so far as the submission of the learned counsel for the respondent that the Sessions Court has already fixed an amount of Rs.6,000/- per month towards maintenance in favour of the petitioner and her daughter and the said order was not challenged by the petitioner is concerned, a perusal of the said order dated 30th January 2014 passed by the learned Sessions Judge indicates that the said order was passed as and by way of interim order during the pendency of the appeal and was passed without recording any reasons.

11. In my view, the said order passed by the learned Judge of the Sessions Court was not conclusive for deciding the interim application for maintenance made by the petitioner for herself and her daughter who is six years old and is studying in school after number of years. It is well settled principle of law that the application for maintenance under the provisions of Section 125 of the Code of Criminal

Procedure and the application made under the provisions of the Domestic Violence Act are independent proceedings and can be considered simultaneously.

12. A perusal of the order passed by the Family Court No.2, Mumbai indicates that the learned Judge of the Family Court carried an impression that the order passed by the Sessions Court as and by way of interim order during the pendency of the appeal was conclusive and binding precedent forever on the Family Court as well as on both the parties.

13. A perusal of the order dated 21st November 2015 passed by the learned Additional Sessions Judge also indicates that no reasons were recorded by the Sessions Judge while confirming the order of interim maintenance of Rs.6,000/- per month. Be that as it may, the learned Judge of the Family court was independently bound to consider the application for maintenance from the date of application on the basis of the situation prevailing on the date of such application. The situation prevailing on the date of the application made by the petitioner in the year 2013 cannot be same what is prevailing in the year 2016.

14. Learned Family Court has adopted a casual approach in the order dated 24th February 2016 by rejecting the application filed by the petitioner for maintenance for herself and her daughter. Considering the rate of inflation today, the amount of Rs.5,000/- per month would not be at all sufficient for any person to survive with dignity and more particularly for two persons including a school going child.

15. Learned counsel for the petitioner has rightly placed reliance on the judgment of the Supreme Court in the case of ***Manish Jain Vs.Akanksha Jain, reported in II (2017) DMC 106 (SC)*** and more particularly paragraph 15 thereof. Supreme Court has held that it is no answer to a claim of maintenance that the wife is educated and could support herself. 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 and, therefore the Court should decide the claim for maintenance based on various factors brought before the Court. In my view, the principles laid down by the Supreme Court in the aforesaid judgment would squarely apply to the facts of this case. The learned Judge of the Family Court

ought to have considered the factual situation on the date of making of application filed by the petitioner for maintenance and not the situation prevailing in the year 2013.

16. Be that as it may, I am inclined to accept the statement made by the learned counsel for the petitioner that the petitioner though having obtained certificate from Bar Council of Maharashtra and has not started practice. There is no other material produced by the respondent to controvert this statement made by the learned counsel for the petitioner. The petitioner had made an application for maintenance of Rs.25,000/- per month for herself and Rs.15,000/- per month for her daughter who is six years old and is studying in school.

17. Considering the fact that the respondent is earning at least a sum of Rs.55,000/- per month and this fact is not disputed by the respondent, I am inclined to grant further maintenance of Rs.15,000/- per month i.e. Rs.10,000/- per month to the petitioner and Rs.5,000/- per month to her daughter till till she attains the age of majority from the date of application made by the petitioner before the Family Court. In addition to this compensation, the respondent shall continue to pay the educational fees of the daughter directly to the school upon receipt of the

communication of the amount on or before the last date for payment of such fees with intimation to the petitioner. The amount of maintenance to the petitioner and her daughter by this order is in addition to the amount of maintenance awarded by the Courts earlier.

18. The impugned order dated 24th February 2016 is accordingly quashed and set aside. The amount shall be paid by the respondent from the date of application which was made by the petitioner before the Family Court. Arrears of amount shall be deposited by the respondent before the Family Court within two weeks from today. Upon deposit of such arrears, the Family Court shall permit the petitioner to withdraw the said amount for herself and her daughter unconditionally.

19. In so far as the maintenance awarded by this Court for each month is concerned, the same shall be paid by the respondent to the petitioner on or before 15th day of every month without fail. If this order is not complied with by the respondent, the petitioner would be at liberty to file appropriate proceedings for taking an appropriate action against the respondent.

20. Rule is made absolute in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.