

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***APPELLATE CIVIL JURISDICTION*****WRIT PETITION NO. 807 OF 2017****ALONGWITH****CIVIL APPLICATION NO. 1916 OF 2017**

Viren Jaysukhlal Jasani,)
aged about 37 years, Occ.Self Employed,)
residing at 101, Coral Shree,)
Opp.HDFC Bank, Vallabh Baugh Lane,)
Tilak Road, Ghatkopar (E),)
Mumbai 400 077) **..... Petitioner/Applicant**

VERSUS

Mrs.Milounie Viren Jasani,)
aged about 36 years, Occ.Self Employed,)
residing at Plot No.521, Shakti,)
Adenwala Road, Matunga East,)
Mumbai 400 019) **..... Respondent**

Mr.Jairam Chandnani for the Applicant.

Ms.Seema Sarnaik for the Respondent.

CORAM : G.S.KULKARNI, J.**DATE : 14th SEPTEMBER, 2017****JUDGMENT**

Rule. Returnable forthwith. Heard finally by consent of parties.

2. By this petition filed under Article 227 of the Constitution, the petitioner husband is before this court challenging the order dated 10th October,2016 passed

by the learned Judge, Family Court, Mumbai whereby an application as filed by the respondent wife for award of maintenance *pendente lite* has been granted in the following terms :-

- 1) The application is allowed as under ;
- 2) The respondent shall pay maintenance pendentelite @ of Rs.20,000/- per month each to the petitioner and her daughter i.e. total amounting to Rs.40,000/- per month from the date of filing of the application i.e. January 2015.
- 3) The respondent shall further pay separate accommodation charges/rent of Rs.20,000/- per month to the petitioner from October,2016.
- 4) He shall further pay litigation expenses of Rs.20,000/- to the petitioner.
- 5) Copy of the order be supplied free of costs to the petitioner.
- 6) Order dictated and pronounced in open Court.

3. The respondent wife has instituted Petition No. A-183 of 2015 seeking a decree of divorce under the provisions of section 13(1)(i-a) of the Hindu Marriage Act as also has filed a petition under section 26 for interim custody of the child. In paragraph 23 of the matrimonial petition, the respondent had set out the earnings of the respondent husband. The case of the respondent before the Family Court is that the petitioner is associated with the family businesses and has a good source of income and always had high standard of living. The respondent has also placed

on record the biodata of the petitioner received at the time of marriage which disclosed that the petitioner was engaged in the family business. The relevant extract of which reads thus :-

EXPERIENCE : - Worked for 2 years in Mumbai with a software company,
Developing financial software
- Worked for almost 2 years in A.M.S.(USA) for
developing software for American Government
- After returning back from the USA joined family business
in metal fabrication particularly for developing export of
sheet metal parts in the European countries.

4. In the application filed by the respondent for maintenance *pendente lite*, the respondent has set out in detail in paragraph (E) the grounds justifying the said claim of maintenance *pendente lite*. It was contended that the respondent and the petitioner were married on 18th March, 2006. After the marriage, though she being a graduate in Commerce, she never undertook employment due to denial of such opportunity by the family members of the petitioner and the petitioner, as a matter of their traditional social status, wherein the daughter-in-law is not allowed to venture with outside employers. The respondent stated that during the stay of the respondent at the matrimonial house, the respondent was dependent on the petitioner and his family members and the father-in-law, who disbursed an amount of approximately Rs.75,000/- to Rs.80,000/- every month for the maintenance of the family and household which, was received in lumpsum of Rs.2 lac to Rs.3 lac periodically/quarterly, and the last such amount so distributed was in the month of

May 2013 until the respondent was staying at her matrimonial house. In paragraph 28 of her application, the respondent also set out the necessity for alternative residential accommodation that her parental residence was totally insufficient to accommodate the respondent and her minor daughter, as also the parental residence was far away from school where the minor daughter was taking education. In paragraph 29 of her application, the respondent had made averments of the standard of living and amenities availed by her at her matrimonial house. In paragraph 31 of the application, the respondent averred in regard to the petitioner's earnings. It was stated that the income tax return of the petitioner was not commensurate with the real income. It was specified that the family businesses provided sufficient cash flow and the profit was distributed to the family members in cash from time to time. It was stated that though the petitioner may not show high income for himself, he was supplemented in terms of his share, by way of cash disbursement from the family business. This was evident from the fact that petitioner was having substantial assets by having investments in a flat at Leonardo, B, Hiranandani, Thane which was one BHK flat and at the value of Rs.75,00,000/- and fixed deposits in substantial sum in the sum of Rs.25,00,000/- to Rs.30,00,000/- . This was in addition to the 2 BHK flat in building Shubham which was at the relevant time was vacant after the respondent was made to leave the matrimonial house. It was further pleaded that the petitioner was also engaged

in share investments and trading and was earning income from that source. It was stated that the petitioner had maintained a high standard of living. It is on these premises the respondent prayed in the following terms :-

(a) Pending the hearing and final disposal of the main petition, the Hn.Court may please order the Respondent to pay to the Petitioner and minor daughter interim maintenance pendete-lite of the amounts per month or yearly as the case may be as mentioned in the Schedule of claim below as and by way of maintenance from the month of June 2013, when the Petitioner started staying in her parental house at Matunga.

	<u>Amount per month</u>	<u>Amount per Annum</u>
A) For the Child Ms.Prisha Age 7 years 8 Month		
1. Educations Fees & School Expense in the school where she is studying personally Includes tuition, Bus Fare, books, Uniform, Extracurricular, etc.	10,000	1, 20,000
2. Food etc 250-275 per day. Hence for 30 days	8,000	96,000
3. Clothing	1,500	18,000
4. Miscellaneous : Toys, toffees outing, Playing etc.	1,000	12,000
Sub Total	20500	246000
5. Premium for Daughter's heath insurance accidents insurance, and life insurance (Rs.5 Lakhs) to be taken out until she attains majority.		15,000

5. The petitioner appeared before the Family Court and opposed the application. The contention of the petitioner is that the interim maintenance which was prayed by the respondent cannot be granted in as much as the petitioner had no financial means for paying such amounts as demanded by the respondent. To support this contention, the petitioner placed reliance on the income tax returns which were filed by the petitioner to contend that the financial status of the petitioner was reflected in the income tax return.

6. From the reply dated 10th April, 2015 as filed by the petitioner to the respondent's application for interim maintenance, it can be seen that the basic case of the petitioner is of denial as seen from paragraphs 7, 8 and 9 which deals with the averments as made by the petitioner in paragraphs 22 to 35. It was the case of the petitioner that the respondent has suppressed certain facts that she was trading regularly at stock market, as also was assisting her father in the business and was earning handsome salary. However except for the bare words on paper there was no material to support this contention. The petitioner did not furnish any explanation to the documents as placed on record by the respondent which showed that there was sufficient income as clear from the bank entries, as also the specific case, as pleaded by the respondent that the petitioner was associated with the family concerns.

7. Considering the above factual position and the material on record, the learned Judge of the Family Court passed the impugned order granting interim maintenance of the said amounts.

8. Learned counsel for the petitioner in assailing the impugned order, submits that it is erroneous in law and facts as the learned Judge of the family court has completely overlooked that the petitioner had no source of income and did not have an income which can satisfy the interim maintenance as granted by the impugned order. It is submitted that the income tax returns of the petitioner clearly demonstrated that the petitioner had not have sufficient income. It is further contended that the petitioner was not so successful in part of the family business, and therefore the petitioner would be unable to comply with the directions as contained in the impugned order. Learned counsel for the petitioner has drawn my attention to the averments as made by the respondent in her matrimonial petition, as also interim maintenance application, to submit that these averments would indicate that though initially the petitioner was in a sound financial status, however at the time when the court considered the interim application for maintenance, the financial condition of the petitioner was not such, that he could meet the liabilities as held by the impugned order. In so contending there is no denial of the fact that the petitioner is the owner of the flat No.403, Leonardo, B, Hiranandani Complex, Ghodbandar Road, Thane now valued at about Rs.1 crore and that there are fixed

deposit investments with the ICICI Bank, the value of Rs.22 lacs as also there are fixed deposits in the State Bank of India, Ghatkopar (East) Branch of Rs.17 lacs. There is also no denial of the fact that flat no.1301 built up 1350 sq.ft. at Shubham CHS, Rajawadi, Ghatkopar East, Mumbai which is valued at Rs.2.70 crores as the joint family property which was the matrimonial house is still in use by the petitioner for his residence.

9. On the other hand, learned counsel for the respondent in support of the impugned order and also without prejudice to the rights and contentions of the respondent as urged in Writ Petition where her prayers are for the enhancement of the maintenance amount, would contend that the case as urged on behalf of the petitioner in defence of the interim application was totally sham and bogus. It is submitted that the respondent on the basis of several documents which were placed on record before the Family Court had made a prayer claiming the said amount of interim maintenance for herself and the minor schooling daughter. It is submitted that there was no material to displace the respondent's case as made out from the said documents. It is further submitted that the bio-data of the petitioner given to the respondent's family at the time of marriage clearly reflected that the family of the petitioner had several businesses as set out in paragraph 11 of the matrimonial petition. It was submitted that the bio-data of the petitioner clearly indicates that the petitioner had joined the family business after returning from USA. Learned

counsel for the respondent has also drawn my attention to the specific averments made in the petition before the Family Court more particularly the averments in paragraphs 22 to 23 of the petition as noted above which were in regard to the financial position of the petitioner. My attention is further drawn to the specific averments made in paragraphs 27 to 31 of the interim application as stated above by which the respondent justified her claim to seek maintenance. Learned counsel for the respondent has also drawn my attention to the income tax returns filed on behalf of the respondent which shows that the income of the respondent was not more than Rs.3,000/- which was earned by way of interest received by her on a fixed deposit of Rs.3 lacs which was the amount given to her by her father. It is submitted that there was substantial income earned from the various family businesses of the petitioner, the turnover of which was in crores. It is thus submitted that the case of the respondent on the basis of the documents was appropriately accepted by the learned Judge Family Court to the extent granted by the impugned order. It is submitted that though the impugned order has been passed on 10th October, 2016 and despite there being no stay granted by this court to the impugned order, the petitioner is paying only Rs.20,000/- towards the share of the minor daughter. It is submitted that if the case of the petitioner is to be believed, then the petitioner could not have made the voluntary offer to pay an amount of Rs.20,000/- as being paid to the minor daughter for her education

expenses. It is submitted that the petitioner has tried every possible means to avoid the liability to make payment in compliance with the impugned order passed by the family court. It is submitted that the order passed by this court dated 30th January, 2017 merely records the statement made on behalf of the petitioner that the petitioner would continue to pay Rs.20,000/- towards the daughter and this order cannot be contended to mean that the other directions to pay the amount of maintenance to the petitioner and the direction to pay the amount for the house rent as contained in the impugned order are in any manner stayed.

10. On the aforesaid rival contentions I have heard learned counsel for the parties. I have perused the impugned order as also the several documents as placed on record on behalf of the respondent. It is quiet clear that the family of the petitioner has various businesses and that the petitioner is associated with the family businesses. A perusal of the bank statements and the fixed deposits, as also the details of the assets which are brought by the petitioner and the high and the luxurious standard of life being enjoyed by him as seen from the record does not persuade the judicial conscience to accept the petitioner's case of a meager income as put up by the petitioner. The learned Judge of the Family Court in my view has analyzed all the facts that have emerged on record and more particularly as set out in paragraphs 4 to 7 of the impugned order. All these are observations which are made based on material which has come on record and the pleadings of the parties.

The learned Judge of the Family Court in my opinion has rightly considered that looking at the association of the petitioner with the family business and the details of the petitioner's bank accounts as available on record, as also the fixed deposits maintained by the petitioner with the bank, that the petitioner did have sufficient source of income to meet the requirements of the order as passed by the learned Judge of the Family Court which is to take care of the financial interest of the respondent and the minor daughter.

11. It is not in dispute that the petitioner is a IIT engineer, who at some point of time was based in the US. On his return, he has joined the family businesses and also he was had attempted to take different assignments and on the failure, to pursue these assignments is now involved in the family business. It cannot be believed that the petitioner is rendered without any source of the income and much less in the manner in which it is being projected. The learned judge of the family court has rightly come to the conclusion that the case of the petitioner that he is earning a meager amount of Rs.40,000/- to Rs.50,000/- per month as appearing from his income tax returns cannot be accepted. It has clearly come on record that before the respondent separating from the matrimonial house, the family was enjoying a reasonably high standard of living. The petitioner along with the respondent had also travelled abroad. The respondent now having separated from

the matrimonial house along with the minor daughter, consistent with the status and the degree of comfort which she was enjoying is equally entitled to atleast entitled to a standard and she was enjoying in the matrimonial house and to that effect would become entitled to the maintenance as granted by the impugned order. The findings as recorded by the learned Judge of the Family Court are based on the evidence.

12. Considering all these facts, in my view the amount of maintenance which has been granted by the learned judge of the Family Court by the impugned order does not appear to be unjustified and in any manner unreasonable for this court to interfere in this petition. It is well settled that in exercising jurisdiction under Article 227 of the Constitution, the court does not wield the powers of an Appellate Court. The Court would interfere only there is perversity in the findings as recorded by the Court. A perusal of the impugned order indicates that there is no such perversity or any illegality which would warrant interference in this petition.

13. Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in case of ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy***, AIR 2017 SC 2383 and the decision of the Supreme Court in case of ***Dr.Kulbhushan Kumar vs. Smt.Raj Kumari and another***, 1970(3) SCC 129. The

decision in case of ***Kalyan Dey Chowdhury*** (supra) was a case of salary income being drawn by the appellant husband as referred in paragraph 16 of the decision. Learned counsel for the petitioner could not justify in what manner this judgment would assist the petitioner in the facts of the present case. In regard to the decision in ***Dr.Kulbhushan Kumar*** (supra), in my view it is clearly inapplicable to the facts of the present case more particularly the present case being of interim maintenance. In fact the principles as laid down in the said decision goes against the petitioner's case.

14. In the light of the above discussion, no case is made out for the court to exercise its jurisdiction under Article 227 of the Constitution. Accordingly the petition is dismissed. No costs.

15. The petitioner is directed to deposit with the Family court the arrears of the maintenance as granted by the impugned order within a period of three weeks from today. If the amount of arrears is not deposited within the said period, the execution proceedings which are initiated by the respondent shall proceed.

16. Civil application would also not survive and is accordingly dismissed.

(G.S.KULKARNI, J.)