

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10071 OF 2017

Mr. Pushpendu Das
through POA Holder
Smt. Mallika Bidhan Das

.. Petitioner.

vs.

Mrs. Sreoshi Datta

.. Respondent

Mr. Wakankar Siddharth Chandrashekhar with Mr. Kedar D. for the
Petitioner.

CORAM : M. S. SONAK, J.
DATE : 05 DECEMBER 2017

P.C. :-

1] Heard Mr. Wakankar for the petitioner. He points out that despite best efforts service has not been effected upon the respondent. He also points out that the petitioner has, as directed in the order dated 10th October 2017, deposited an amount of Rs.1,50,000/- as against the total arrears of Rs.4,70,000/-.

2] The challenge in this petition is to the order dated 11th July 2017, by which, the Family Court at Pune has directed the petitioner to pay interim maintenance of Rs.30,000/- with effect from 21st July 2016 to the respondent-wife. In addition, the Family Court has also directed the petitioner to pay travelling expenses of Rs.7,500/- to the respondent-wife on date of which she remains present in the Court alongwith her father or relative. In case, the respondent

attends the Court by herself, then 50% of the amount is directed to be paid towards travel expenses.

3] Mr. Wakankar, at the outset, submits that the parameters for determining the interim maintenance are set out in Section 36 of the Special Marriage Act, 1954 (said Act) and such parameters are quite different and distinct from those set out in Section 37 of the said Act. At the stage of considerations of application under Section 36 of the said Act, the Court is required to satisfy itself whether the wife has no independent income sufficient for her support and the necessary expenses of the proceeding. At that stage, the Court is not required to go into the issue of financial status of the parties or such other considerations as may have been set out in Section 37 of the said Act. Mr. Wakankar submits that since, the Family Court has applied the parameters of Section 37 of the said Act to proceedings under Section 36 of the said Act, there is a clear jurisdictional error which warrants interference with the impugned order.

4] Mr. Wakankar further submits that the material on record indicates that the petitioner's employment in Netherland was for a period of only two years, which had since expired. Relying on certain

documents that the petitioner is presently taking a MBA Course in which, he is required to pay fees. From this, Mr. Wakankar suggests that presently, the petitioner is not earning anything and therefore, the order directing payment of the interim maintenance needs to be varied.

5] Mr. Wakankar submits that there is an admission on record that the respondent -wife earns Rs.19,200/- per month. He submits that there are no children from the marriage, this amount is more than sufficient for the maintenance of the respondent – wife. Mr.Wakankar submits that since this aspect has not been taken into consideration by the Family Court, the impugned order warrants interference.

6] Upon consideration of Mr. Wakankar's submissions and perusal of the material on record, one thing that is clear is that in the reply filed by the petitioner to the respondent's application seeking interim maintenance, there is not even a statement that the petitioner is no longer earning any amount, though, he is staying in Netherlands. The document at page 95, at the highest shows, that the petitioner has enrolled himself in Course for which fees and expenses towards

Books come to Euro 224. There is material on record, which suggests that the petitioner, at the Netherlands earns more than Euro 5000. In fact, in paragraph 13 of the impugned order, there is a statement of the advocate for the petitioner, in which, it is admitted that the petitioner earns Rs.3,70,000/- per month. By simply stating that the petitioner no longer earns any amount, whatsoever, the petitioner, is obviously not being candid to the Court.

7] There is no positive material that the petitioner has quit earning anything post the expiry of two years from the date of his appointment in 2015. The inference sought to be drawn from the fees receipt is also not sufficient to hold that the petitioner has quit earning and is only studying in the Netherlands.

8] The Family Court has considered the income of the respondent- wife. The Family Court has reasoned that in the facts and circumstances, the interim maintenance of Rs.30,000/- per month would be reasonable. For this purpose, the Family Court has quite correctly taken into consideration the income of the petitioner and also made an observation that the position of the respondent – wife would require her to have maintenance at the rate of

Rs.30,000/- per month. The discretion has been exercised on proper parameters. This is not a case of interchanging parameters as prescribed in Sections 36 and 37 of the Special Marriage Act, 1954. The Family Court has quite correctly adverted to the issue of sufficiency and the reasoning is far from perverse. The petitioner also is not at all candid to the Court. A bold statement is made that the petitioner earns virtually nothing. No equitable reliefs under Article 227 of the Constitution of India can be granted to the petitioner who is not at all candid with the Court.

9] Taking into consideration the aforesaid circumstances cumulatively, there is no case made out to interfere with the impugned order in the exercise of extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India. This petition is, therefore, dismissed. The interim order, if any, to stand vacated. The amounts deposited by the petitioner in this Court may be withdrawn by the respondent-wife unconditionally.

10] In case, the amounts are not withdrawn within a period of two months from today, the Registry is directed to transmit such amount together with the accrued interest to the Family Court at Pune taking

up P.A. No. 486 of 2015, so that the Family Court can pay the same to the respondent -wife.

11] The petitioner is directed to clear the arrears within a period of eight weeks from today.

12] This petition is accordingly, dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)