

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

**WRIT PETITION NO. 3850 OF 2015**

Sachin Nivrutti Gaikwad ..Vs.. Jayashree Sachin Gaikwad & Anr.

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| Office Notes, Office Memorandum of appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's orders |
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Mr. Harshad M. Inamdar for Petitioner.  
Mrs. Avanti Inamdar i/by. R. N. Gite for  
Respondent No.1.

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**CORAM : K. K. TATED, J.**  
**DATE : JULY 21, 2017.**

**P.C. :**

. Heard learned Counsel for parties.

2. At the request of learned Counsel for Petitioner matter was posted today under the caption 'for admission and interim relief' to enable him to place on record receipt of amount paid and/or deposited by him to the extent of Rs. 40,000/- in Court.

3. Today the learned Counsel for Petitioner submit that the matter between Petitioner and Respondent is before the trial court. Hence, his client is not present to place on record the receipt showing that he had already deposited the sum of Rs. 40,000/-.

4. By this petition under Article 227 of the Constitution of India Petitioner is challenging the ad-interim order passed by the Joint Civil Judge, Senior Division, Nipad on 20<sup>th</sup> August, 2015 below Exhibit 5 in Hindu Marriage Petition No. 282 of 2014 directing the Petitioner to pay sum of Rs. 3000/- per month by way of maintenance to the Respondent from 25<sup>th</sup> September, 2014.

5. It is to be noted that in the present proceeding Respondent-wife filed Hindu Marriage Petition No. 282 of 2014 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. In that Application, Respondent-wife has filed Application below Exhibit 5 under Section 24 of the said Act seeking direction to the Petitioner to pay sum of Rs. 3000/- per month during the pendency of the Hindu Marriage Petition as the Petitioner is earning about Rs. 30,000/- per month. In that application, though the Petitioner appeared before the trial court on 27<sup>th</sup> March, 2015, but failed to file his reply either in Hindu Marriage Petition and/or in Application below Exhibit 5 for interim relief.

6. Considering these facts, the trial court passed the impugned order dated 20<sup>th</sup> August, 2015 directing the Petitioner to pay sum of Rs. 3000/- per month by way of maintenance charges. The said order is challenged by the Petitioner before this Court.

7. The learned Counsel Mr. Inamdar for Petitioner submit that the trial court without giving chance to the Petitioner to file Affidavit-in-reply, passed the impugned order directing to pay sum of Rs 3000/- per month by way of maintenance charges from 25<sup>th</sup> September, 2014. He further submit that at present Petitioner is not in service and he is not earning anything. He submit that earlier the Petitioner was working with Project Concept Company. Because of his ill-health, the said Company removed the Petitioner by termination letter dated 15<sup>th</sup> September, 2015. He further submit that before removal he was getting gross salary of Rs. 8505.48/- only.

8. In support of this contention, Petitioner relies on letter dated 15<sup>th</sup> September, 2015 issued by Project Concepts Company (Exhibit 'E') and pay slip for the

month of August-2015, June-2015 and July-2015.

9. On the basis of these submissions, the learned Counsel Mr. Inamdar appearing on behalf of Applicant submit that the trial court passed the impugned order dated 20<sup>th</sup> August, 2015 without giving any opportunity to the Petitioner and/or considering the Petitioner's capacity to pay the maintenance charges to the Respondent-wife. Hence, the said order is required to be set aside.

10. On the other hand, learned Counsel Mrs. Inamdar appearing on behalf of Respondent-wife vehemently opposed the present Writ Petition. She submit that those ad-interim relief granted by the Joint Civil Judge, Senior Division, Niphad below Exhibit 5 in Hindu Marriage Petition No. 282 of 2014 directing to pay Rs. 3000/- per month by way of maintenance charges, the Petitioner failed and neglected to pay a single pai. She further submit that though the learned Counsel appearing on behalf of Petitioner made a statement before this Court that they he had already deposited sum of Rs. 40,000/- before the trial court, same is not correct. She submit

that she received instructions from her client that neither the Petitioner has paid any single pai to the Respondent-wife nor deposited any amount in the trial court. Therefore, there is no question of granting stay and/or interim relief in the Writ Petition which is filed under Article 227 of the Constitution of India. She submit that it is for the Petitioner to maintain the Respondent-wife as she is unemployed. Hence, there is no substance in the present Petition. Hence, the same is liable to be dismissed with costs.

11. I have heard both the Counsel at length.

12. This matter was kept specially for admission and ad-interim relief today at the request of Advocate for Petitioner, as the Petitioner was supposed to be placed on record the receipt to show that either he paid or deposited in court sum of Rs. 40,000/- towards the maintenance charges, but the same is not done by the Petitioner only on the ground that today the matter is on board before the trial court.

13. The learned Counsel Mr. Inamdar for Petitioner submit that it remains on his part to

place on record the copies of receipts to show that the Petitioner has deposited sum of Rs. 40,000/- in the trial court because his client is held up in the trial court.

14. It is to be noted that present petition is pending for last two years. Even at the time of filing present writ petition, the petitioner has not placed on record any document to show that either he paid or deposited part payment of maintenance charges in the trial court.

15. Considering these facts, I am of the opinion that Petitioner to pay the costs of Rs. 15,000/- to the Respondent.

16. It is to be noted that in the present proceeding though the Petitioner appeared before the trial court on 27<sup>th</sup> March, 2015. He failed to file his reply to the application filed by the Respondent for interim maintenance. Apart from that, the pay slip for the month of June-2015 shows that Petitioner's pay was Rs. 13959/- and pay slip for the month of July-2017 shows that Petitioner's pay was Rs. 15010/-. As the order passed by the trial court was on 20<sup>th</sup> August, 2015 i.e. near about two years before till today the Petitioner

failed and neglected to pay a single pai to the Respondent-wife.

17. Considering these facts, I do not find any reason to entertain the present Writ Petition under Article 227 of the Constitution of India against the interlocutory order passed by the trial court. Hence, the following order.

ORDER

- (a) The writ petition stand rejected.
- (b) Petitioner to pay the costs of Rs. 15,000/- to the Respondent within one month from today.

**(K.K.TATED, J.)**