

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.28040 OF 2016

Virendra Radhakrushna Bobade : Petitioner.
versus
Sau. Anjali virendra Bobade : Respondent

**Mr. Amey Deshpande for the Petitioner.
Mr. Sachin Gite for the Respondent.**

CORAM : R. M. SAVANT, J.
DATE : 18th January 2017

ORAL ORDER

1 Rule, with the consent of the learned counsel for the parties, made
returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 05/08/2016 passed by the learned Judge of the Family Court, Nashik by which order the application filed by the Respondent herein under Section 24 of the Hindu Marriage Act for maintenance from the Petitioner herein came to be allowed and the interim maintenance in the sum of Rs.7,000/- per month came to be granted to the Respondent.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner and the Respondent are estranged and the Petitioner has filed a Petition for divorce being No.439 of

2011 under Section 13(1) of the Hindu Marriage Act. The proceedings between the Petitioner and the Respondent have had a chequered history inasmuch as an order for permanent alimony has been passed against the Petitioner by the learned Civil Judge, Senior Division, Nashik on 14/11/2008. In terms of the said order, the Petitioner herein has to pay Rs.4000/- per month to the Respondent. On account of arrears, a warrant came to be issued against the Petitioner in the year 2011. However, the Petitioner has thereafter paid the amount mentioned in the said warrant and has thereafter gone on paying in terms of the order in respect of alimony. However, there are arrears of Rs.1,12,000/- against the Petitioner as on 13/08/2016 in respect of which an order was passed by the learned Judge of the Family Court which was the subject matter of the another Petition listed before this Court i.e. Writ Petition No.13493 of 2016. The said Petition has been dismissed by an order passed today. It seems that the Respondent wife has also filed proceedings for recovery of the amount granted to the children under an order passed under Section 125 of the Cr.PC. which was passed on 12/01/2001. The said application is pending in which application now the application for amendment filed by the Respondent wife to implead the two children as applicants has been allowed. The instant application has been filed in view of the fact that the Petitioner herein has filed a Petition for divorce under the provisions of the Hindu Marriage Act. In the said Petition the instant application for maintenance has been filed under Section 24 of the said Act.

4 The application is founded on the fact that the Petitioner's gross salary was Rs.40,000/- approximately. The Trial Court having regard to the said fact has allowed the said application for interim maintenance by granting the same in the sum of Rs.7,000/- per month. The instant application has been filed on 06/11/2015 after the first application was rejected for a technical reason some time in the year 2013. It is an undisputed position that the Petitioner who was working as a Head Clerk in the Forest Department of the Government of Maharashtra has retired on 31/08/2015. Hence the Petitioner has retired prior to the date on which the application was filed. However, the learned Judge oblivious of the aforesaid fact by taking into account the salary of the Petitioner has granted interim maintenance in the sum of Rs.7,000/-. It is required to be noted that the Petitioner is drawing pension in the sum of Rs.7680/- per month after commutation of the pension. The aspect of the Petitioner having retired assumes importance in the matter of fixing the interim maintenance as also the permanent maintenance. The fact that the Petitioner is required to pay permanent alimony of Rs.4000/- per month also cannot be lost sight of as also the fact that there is already an order granting maintenance under Section 125 of the Cr.P.C. to the children. Hence cumulatively taking the aforesaid facts into consideration, in my view, the amount of interim maintenance fixed at Rs.7000/- per month is excessive especially having regard to the fact that the Petitioner had retired even prior to the application being

filed. In my view, therefore, the interim maintenance would have to be modified. The impugned order to the extent that it directs the interim maintenance to be paid at the rate of Rs.7000/- would have to be set aside and is accordingly set aside. The Respondent would be entitled to interim maintenance at the rate of Rs.2000/- per month from the Petitioner, from the date of the application. Since the adjudication is of the interim maintenance, the main application for maintenance would be decided on its own merits and in accordance with law by giving proper opportunity to the parties. The Petitioner may clear the arrears of maintenance under the instant order within a period of six weeks from date. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]