

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11349 OF 2017

Vishalkumar R. Landage	..	Petitioner
vs.		
Shridevi @ Gouri V. Landage	..	Respondent

Mr. Naik i/b. Mr. U. R. Mankapure for Petitioner.

CORAM : M. S. SONAK, J.
DATE: 07 DECEMBER 2017

P.C :

1] The challenge in this petition is to the order dated 31st August 2017, by which, the learned trial Judge has directed the petitioner husband to pay interim maintenance of Rs.5,000/- per month effective from 6th October 2016 and further, to pay Rs.10,000/- towards costs of the proceedings.

2] Mr. Naik, learned counsel for the petitioner submits that the petitioner, is already paying an amount of Rs.2,500/- per month to the respondent wife in pursuance of the order dated 28th September 2016 under Protection of Women from Domestic Violence Act, 2005 Proceedings (D.V. Proceedings). He submits that such payment was required to be taken into consideration by the learned trial Judge but the same has not been taken into consideration. He also points out that the petitioner is an agriculturist and considering the inclement weather, the petitioner is not in a position to pay so much maintenance.

3] From the perusal of the impugned order, it appears that the issue of award of maintenance in the D.V. Proceedings was not

even raised before the learned trial Judge. Accordingly, the learned trial Judge, had no occasion to consider the impact of the same whilst making the impugned order. In such circumstances, rather than entertaining the present petition, it will be appropriate if the petitioner is granted liberty to place all such facts with regard to the D.V. Proceedings, the orders made therein and the maintenance being paid by the petitioner in pursuance of such orders before the learned trial Judge and seek a variation or modification to the order dated 31st August 2017. If the petitioner makes such an application, directions can be issued for expeditious disposal of such application, provided the petitioner also displace the reasonable fairness.

4] Accordingly, the petitioner is directed to clear the arrears of maintenance in terms of the impugned order dated 31st August 2017 within a period of eight weeks from today. This Court was inclined to give a lesser time however the learned counsel for the petitioner prays for two months time and therefore, two months time is granted to clear the arrears. If the arrears are indeed clear within two months from today, the petitioner, will have the liberty to file application for variation within a period of four weeks thereafter. If such an application is filed, after the arrears have been cleared, the learned trial Judge is requested to dispose of such application as expeditiously as possible and in any case within a period of two months from the date the same is filed. The learned trial Judge, will no doubt afford proper opportunity to the respondent before deciding such application for modification. Such application to be decided on its own merits and in accordance with law.

5] If however, the petitioner, does not clear the arrears of maintenance in terms of the impugned order within two months from

today, this petition will be deemed to have been dismissed, without grant of any liberty. The petitioner to either pay the amount by cheque or by demand draft to the respondent wife or the petitioner may deposit such amount before the trial Court so that, the respondent wife, can withdraw the same.

6] The amounts paid or deposited by the petitioner in pursuance of the impugned order shall be liable for adjustment, in case the learned trial Judge ultimately concludes that the impugned order is required to be modified in the light of the order made in the D.V. Proceedings.

7] With the aforesaid observations and the liberty, this petition is disposed of.

8] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)