

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

WRIT PETITION NO. 10896 OF 2014

Mr. Ved Prakash Ramkishan Agarwal ..Vs.. The State of Maharashtra
& Anr.

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 Ramesh D. Chheda for Petitioner.
Mrs. V.S.Nimbalkar, AGP for Respondent No.1.
Mr. Anand N. Khonderao for Respondent No.2.

CORAM : K. K. TATED, J.
DATE : JULY 18, 2017.

P.C. :

- . Heard learned Counsel for parties.
2. By this petition under Article 227 of the Constitution of India Petitioner is challenging the order dated 7th November, 2014 passed by the Family Court No.3, Mumbai at Bandra in Application No. 313 of 2014 for modification of maintenance order dated 13th September, 2014 in Interim Application No. 151 of 2013.
3. In the morning session when the matter was called out, the Respondent No.2 Bhavana Vedprakash Agarwal appeared party

in person. She made application for adjournment on the ground that her Advocate's mother expired and he is out of Mumbai for 15 days and directed her to take adjournment beyond 21st August, 2017. This Court directed her to make application in writing stating all these facts and matter was kept in second session.

4. In second session, learned Counsel Mr. Khonderao appeared on behalf of Respondent No.2. Respondent No.2 herself was not present in Court. The learned Counsel for Respondent no.2 submit that he never instructed his client to make such type of statement that his mother is expired and he is out of Mumbai for 15 days.

5. Considering the statement made by Respondent No.2 - party in person, it is a fit case of taking action against her under Section 195 of Indian Penal Code for making a false statement to gain favourable order. But, considering the dispute in the present matter this Court is not taking any action against her.

6. The learned Counsel Mr. Chheda appearing on behalf of Petitioner submit that in the present proceeding initially the Respondent filed Application under Sections

24 and 25 of Hindu Marriage Act, 1955 for grant of maintenance pending the hearing and final disposal of Marriage Petition No. A-1129 of 2013. He submit that by that Application, the Respondent claimed Rs. 3,00,000/- per month by way of maintenance allowance. He submit that in Interim Application dated 15th April, 2013 the Respondent-wife made false statement to gain favourable order in her favour. She made a statement that she is not working and therefore there is no source of income.

7. The learned Counsel for Petitioner relies on paragraph Nos. 45 and 47 of that Application which read thus :

“45. The Applicant states that neither the opponent is taking back to the applicant to her matrimonial house nor the opponent is giving anything towards maintenance amount to the applicant. Further the opponent have expelled th applicant from her matrimonial house and the opponent and his family members have dishonestly, kept with them all the Stridan, ornaments, gift items, husehold articles etc. of the applicant and consequently, now the applicant is totally dependent upon her parents for her livelihood as she is housewife and not working anywhere.

47. *The applicant states that the opponent left/deserted his newly married wife i.e. the applicant and since 11/09/2012 the opponent is staying/living separately with the applicant and never tried to talk, meet and see the applicant. the opponent is neither having any care of the applicant nor the opponent have any love and affection with the applicant. On the contrary, the applicant always tied her level best to take all good care of the opponent. The applicant is still having love and affection with the opponent because she is legally wedded wife of the opponent. The applicant always behaved like a devoted wife with the opponent but, the opponent never treated the applicant as his wife but, always given the treatment of a maid servant and/or status and the applicant was just only kept in the house for the formalities of showing to the neighbours and relatives.”*

8. The learned Counsel for Petitioner submit that as soon as they were able to procure the relevant documents showing that Respondent-wife was working and she was earning substantial amount by way of salary, they made application for modification of order dated 13th September, 2014. That application was made by the Petitioner on 7th

November, 2015 and same was registered as Application No. 313 of 2014.

9. The learned Counsel for Petitioner submit that the Respondent-wife filed reply in that application dated 10th December, 2014. Again the Respondent-wife made false statement on solemn affirmation. To that effect the learned Counsel for Petitioner relies on Paragraph Nos. 7 and 8 of that reply which read thus :

“7. The respondent along with her old and patient parents is living in starvation and hence she used to search and do the temporary jobs, as and when the respondent-wife gets the same for livelihood but, the said jobs are temporary in nature and the salary which she is getting is also very much less as compared to the applicant.

8. The Respondent-wife is unable to maintain herself and her old parents in the said less salary which she gets from temporary job and therefore she has filed the Interim Maintenance Application No. 151 of 2014 before this Hon'ble Court and her said application is allowed on 13/09/2014 by this Hon'ble Court but the applicant has not paid

any amount till today to the Respondent-wife in spite of the direction of this Hon'ble Court.”

10. The learned Counsel for Petitioner submit that actually the Respondent was working with Company known as 'Wadhwa Group Holding Private Limited'. He submit that 'Wadhwa Group Holding Private Limited' issued Form No. 26AS under the Income Tax Act for the Assessment Year 2014-15 showing that they deducted TDS from the Respondent's salary. On the basis of TDS, he submit that Respondent was getting monthly salary near about Rs. 50,000/- to Rs. 60,000/- p.m. He submit that these facts were suppressed by the Respondent from the Family Court.

11. In support of this contention, the learned Counsel for Petitioner relies on Exhibit 'A' collectively in the present petition. Those are assessment order for the year 2014-15, Form No. 26AS of Income Tax Act, 1961 etc. He submit that if a person makes incorrect statement for gaining the favourable order, then that order is required to be set aside. He submit that these facts were not considered by the Family Court at the time of hearing petitioner's application below Exh. 38

for modification of the earlier order dated 13th September, 2014. Hence, the Petitioner preferred the present Writ Petition.

12. The learned Counsel for Petitioner submit that though the main Petition No. A-1129 of 2013 stand disposed of during the pendency of the present Writ Petition by order dated 28th June, 2017, in the present Petition they are challenging the order passed by the Family Court on maintenance application during the pendency of main Petition. He submit that in the interest of justice, this Hon'ble Court be pleased to set-aside the order dated 7th November, 2015 and modify the earlier order dated 13th September, 2014 below Exhibit 6 by which the Family Court directed the Petitioner to pay a sum of Rs. 25,000/- per month by way of maintenance charges. He submit that if the said order is not set aside and/or modified, irreparable loss will be caused to the Petitioner.

13. On the other hand, the learned Counsel Mr. Khonderao appearing on behalf of Respondent-wife makes a statement before this Court he never instructed his client to inform the Court that his mother is expired and he is out of Mumbai. He submit that Respondent-wife on her own created a story

of death of his mother. He tenders unconditional apology to that effect on behalf of his client.

14. The learned Counsel for Respondent-wife submit that the Petitioner is working abroad and earning more than Rs. 15,00,000/- per month. He further submit that during the pendency of the main petition, the Family Court after considering the evidence on record granted maintenance charges of Rs. 25,000/- per month to the Respondent – wife which was reasonable. He further submit that though the Family Court by its order dated 13th September, 2014 directed the Petitioner to pay the maintenance charges at the rate of Rs. 25,000/- per month to the Respondent-wife, he failed and neglected to pay the same. Hence, the Respondent-wife constrained to file Regular Darkhast for recovery of the said amount. That Darkhast is pending on its own merits. He submit that considering the income of the Petitioner, he do not require any modification in the earlier order dated 13th September, 2014 passed by the Family Court below Exhibit 6 granting interim maintenance of Rs. 25,000/- per month.

15. I heard both the sides at length.

16. It is to be noted that the Respondent-wife to gain the order in her favor can make any type of statement before the Court. In morning, she has made a statement before this court that she want adjournment because her Advocate's mother is expired and he is out of town. In second session Advocate himself appeared before this Court and admitted that whatever statement made by her client in morning session is incorrect.

17. In the present proceeding Respondent-wife filed Application below Exhibit 6 for interim maintenance at the rate of Rs. 3,00,000/- per month from the Petitioner on the ground that she is household wife. She do not have any source of income. She has to depend on her parents' home. Statement made by the Respondent-wife in her Application below Exhibit 6 itself was incorrect to her own knowledge. She had given false statement to gain the favourable order of the Family Court.

18. Bare reading of Paragraph Nos. 10 and 17 of the Respondent's application for maintenance, reply filed by her in Petitioner's application below Exhibit 38 clearly shows that she made false statement on solemn

affirmation because that time she was working and was getting salary of more than Rs. 50,000/- per month. Exhibit A collectively in the present petition clearly shows that she was working and was getting monthly salary for more than Rs. 50,000/-.

19. Considering these facts and as the Respondent made a false statement before this Court as well as before the Family Court in her application for maintenance charges as well as reply to the Petitioner's application below Exhibit 38, I am of the opinion that in any case Respondent is not entitled to maintenance at the rate of Rs. 25,000/- per month. In any case Petitioner being a husband he has to pay some amount to the Respondent-wife for her day to day maintenance.

20. Considering these facts, I am of the opinion that Petitioner has made out case for modification of the order dated 13th September, 2014 passed by the Family Court No.3, Mumbai in A. No. 151 of 2013 and to set aside the order dated 7th November, 2014 below Exhibit 38. Hence, the following order is passed.

ORDER

(a) Application filed by the Petitioner before the Family Court being Application No. 313 of 2014 for modification of interim maintenance order dated 13th September, 2014 in Interim Application No. 151 of 2013 is partly allowed.

(b) Petitioner is directed to pay a sum of Rs 5000/- per month to the Respondent-wife as interim maintenance from the date of Application Exh. 6 i.e. 15th April, 2013 till 28th June, 2017.

(c) Petitioner to clear the entire arrears of maintenance charges within three weeks from today, failing which, writ petition shall stand dismissed without reference back to the Court.

(d) Petitioner to deposit the entire arrears of maintenance charges in the Family Court within three weeks from today.

(e) Writ Petition stand disposed of Accordingly.

(K.K.TATED, J.)