

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

WRIT PETITION NO. 13405 OF 2016

Sandip Maruti Mane

..Petitioner.

Vs

Sou. Suchita Sandip Mane

.. Respondent

Mr. Priyal G. Sarda, Advocate for Petitioner.

Mr. Rahul S. Kadam, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 25/04/2017

PC:

1. Heard Mr.Priyal Sarda, learned counsel for the petitioner and Mr.Rahul Kadam, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 4.8.2016 passed by the learned 12th Jt. Civil Judge, Senior Division, Pune, below Exhibit-20 in Hindu Marriage Petition No.448 of 2014. By that order, the learned trial judge allowed the application made by the respondent-wife under Section 24 of the Hindu Marriage Act, 1955 (for short, 'Act') and directed the petitioner-husband to pay maintenance to the respondent-wife at the rate of Rs.7000/- per month from the date of filing of the application, i.e. 28.10.2015.

3. In support of this petition, Mr. Sarda submitted that net income of the petitioner is Rs 16,000/- to 17,000/- per month. He

is maintaining his children as also parents. He also invited my attention to the monthly expenditure incurred by the petitioner. He has also invited my attention to the salary slip for the month of March, 2017. His gross salary is Rs.45,127.51 and deductions are Rs.24,703.51. In other words, his net pay is Rs. 20,424/-.

4. Mr.Sarda submitted that the respondent, on her own volition, left the matrimonial home. She is not looking after children. She has not filed petition for restitution of conjugal right. She has not filed custody petition. He further submitted that in fact the respondent is working as a Beautician and she is earning hand-sum amount. The amount of maintenance awarded by the learned trial Judge is exorbitant. For all these reasons, he submitted that the impugned order deserves to be set aside.

5. On the other hand, Mr. Kadam supported the impugned order. He has invited my attention to paragraph 4 of the impugned order. In paragraph 4, the learned trial Judge observed that the petitioner is highly qualified person and working in Tata Motors. He gets Rs. 50,000/- p.m. He has two plots, one at Pimpri Chinchwad New Town Planning Authority and other at MIDC Talegaon. The petitioner has constructed RCC building consisting of ground plus first floor and is used as a Hostel. The petitioner is earning Rs. 80,000/- per month. Respondent has also produced the documents in support of the fact that the petitioner has purchased Gat No.122 at Mouze Ambi, Taluka - Mawal, District

Pune which is used as a hostel.

6. Mr. Kadam further submitted that the petitioner had purchased property bearing Gat No.122, admeasuring 10 H. 53R plus Potkharaba 31R at village Ambi for a consideration of Rs. 16,50,000/- under Sale Deed dated 6.7.2012. Mr.Sarda submitted that the petitioner is one of the co-owners along with 11 others.

7. Mr.Kadam invited my attention to the order dated 23.2.2017 passed by this Court. While issuing notice, this Court granted ad-interim relief in terms of prayer (c) on the footing that the petitioner has cleared all the arrears till date. Mr Kadam submitted that as per the impugned order, the petitioner was expected to pay Rs. 7000/- per month from the date of application, i.e. 28.10.2015. In other words, the petitioner was liable to pay maintenance for two months of the year 2015, 12 months of the year 2016 and one month of the year 2017 (total 15 months @ Rs.7000/-) That comes to Rs. 1,05,000/-. As against this, the petitioner has paid Rs.60,000/-. Thus, interim order was obtained by not disclosing the true facts. Mr. Sarda did not dispute this position. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In paragraph 4 of the impugned order,

the learned trial Judge has referred to the documents produced by the respondent. In paragraph 6, the learned trial Judge also considered the statement produced by the petitioner about his monthly expenditure as also his salary slip for May, 2016. In paragraph 7, the learned trial Judge dealt with submission of the petitioner that the respondent is working as Beautician and is earning handsome income. The learned trial Judge observed that the petitioner did not produce any document in support of this contention.

9. For the reasons stated in paragraphs 4, 6 and 7, I do not find that the learned trial Judge has committed any error. Though the learned trial Judge referred to several documents produced by the respondent in the trial Court, the petitioner did not annex those documents along with the petition. Even during the course of hearing, the petitioner did not produce those documents. The petitioner, however, attacked the finding recorded in paragraph 4 on the basis of the documents. The petitioner contended that the said documents do not substantiate the case of the respondent. In short, the petitioner attacked those documents without annexing those documents. In my opinion, the petitioner should have annexed those documents along with the petition or at any rate produced the documents at the time of hearing of the petition. As the petitioner did not produce those documents, this is a fit case for drawing adverse inference against him. Had the

petitioner produced the documents referred in paragraph 4, certainly these documents would have gone against the petitioner. I, therefore, do not find any merit in the submission of Mr. Sarda that the documents referred in paragraph 4 of the impugned order do not substantiate the case of the petitioner.

10. That apart, on 23.2.2017 while issuing notice and granting ad-interim order, this Court specifically clarified that the ad-interim order is granted on the basis that the petitioner has cleared all the arrears till date. It is now evident that the petitioner has paid Rs.60,000/- as against Rs.1,05,000/- as on January 2017. Mr. Sarda did not dispute this position. In other words, interim order was secured without clearing all the arrears as on the date of the order. In view thereof also, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. Order accordingly.

(R.G.KETKAR, J.)