

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

WRIT PETITION NO.6977 OF 2017

Milind Sakharam Gurav	..	Petitioner
Vs.		
Snehal Milind Gurav	..	Respondent

Mr.Uday Warunjikar for the petitioner.
Ms.Laxmi P. Rao for the respondent.

***CORAM : R.D. DHANUKA, J.
DATE : 20th November 2017***

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 5th November 2016 below Exhibit-1 in Regular Darkhast No.111 of 2016 passed by the learned Judge of the Family Court, Mumbai and also rejecting the application below Exhibit -12 filed by the petitioner. Some of the relevant facts for the purpose of deciding this petition are under :-

2. On 25th June 1989, the petitioner and the respondent got married. Two daughters were born out of the said wedlock. On 12th October 2009, the respondent filed a petition being P.A. No.2215 of 2009 before the Family Court for seeking a decree of divorce against

the petitioner under the provisions of the Hindu Marriage Act. The said proceedings were contested by the petitioner by filing written statement. The Family Court No.5 passed a decree of divorce against the petitioner in the said petition filed by the respondent inter alia praying for decree of divorce. The Family Court held that the respondent has proved the allegations of cruelty against the petitioner. The Family Court granted an amount of Rs.10,000/- as maintenance to the daughters of the parties from the date of receipt of the copy of the order. During the pendency of this proceeding, there was interim order passed by the Family Court against the petitioner directing the petitioner to pay an amount of Rs.10,000/- per month to the respondent herein and Rs.5,000/- per month to her minor daughter Pranjali from the date of the application till the disposal of the petition.

3. The Family Court directed the petitioner herein to pay arrears of interim maintenance from the date of filing of the application i.e. 12th October 2009 till date within two months from the date of the said order and also directed to pay interim maintenance as directed in the said order to the petitioner and her minor daughter Pranjali on or before 16th day of every month. The Family Court also directed the petitioner to pay the school fees of minor daughter-Pranjali from October

2010 till disposal of the petition. The Family Court however rejected the application of the petitioner for interim maintenance of her daughter-Pradnya.

4. The petitioner herein made an application for modification of the said order dated 8th September 2010 by making an application dated 8th May 2014. In the said application, the petitioner stated that he did not want to challenge the payment of maintenance of Rs.5,000/- per month to the minor daughter from the date of the application. It was contended by the petitioner that as per the order dated 8th September 2010, the petitioner was only liable to pay maintenance of Rs.2,70,000/- for minor daughter along with the educational expenses for five years and thus his liability would be limited to the maximum amount of Rs.4,00,000/- till April 2014. It was contended that the petitioner had already paid a sum of Rs.5,10,000/- and any excess amount alleged to have been paid by the petitioner shall be refunded by modifying the said order dated 8th September 2010. The Family Court passed an order that the said application will be heard along with the main petition and accordingly directed the petitioner to keep paying the maintenance to the child as per the earlier order.

5. The respondent filed Family Court Appeal bearing No.18 of 2016 before this Court. The said appeal is admitted and is pending for hearing and final disposal. In the said family appeal, the respondent filed civil applications bearing Nos.23 of 2016 and 200 of 2016 for an injunction restraining the petitioner herein, his servants and agents from transferring and/or creating any third party rights and/or interest in the suit property or from dealing with and/or parting with the property in respect of the Flat No.104, Mahalaxmi Apartment, Vasant Leela, Ghodbunder Road, Thane and for an injunction restraining the petitioner from coming anywhere near the vicinity of the premises where the respondent and her daughters resides and further restraining the petitioner from abusing, threatening or creating any disturbance to their mental peace and also from dispossessing them from the said premises without following due process of law. The respondent has also prayed for interim maintenance of Rs.10,000/- per month to the respondent from the date of the order dated 19th October 2015 and for tuition fees and expenses of the minor daughter-Pranjali to the extent of Rs.1,00,000/- p.a. for her enrollment in the college for Diploma in Engineering. The respondent also prayed for costs and legal expenses to the extent of Rs.2,00,000/-.

6. By an order dated 19th August 2016, Division Bench of this Court after hearing both the parties directed the petitioner herein to clear arrears of maintenance of Rs.4,00,000/- within four weeks from the date of the said order and adjourned the Family Court Appeal No.18 of 2016 along with two civil applications to 2nd September 2016.

7. On 20th September 2016, Division Bench of this Court directed the petitioner herein to file an affidavit stating therein that he had cleared all arrears of maintenance which are to be paid during the marriage petition before the Family Court within two weeks from the date of the said order. On 4th October 2016, the said family court appeal along with two civil applications were adjourned to 18th October 2016. On 18th October 2016, Division Bench of this Court admitted the said family court appeal. On 24th November 2016, Division Bench of this Court disposed of two civil applications filed by the respondent in the said Family Court Appeal No.18 of 2016. Division Bench of this Court rejected the contention raised by the petitioner that the order of interim maintenance dated 8th September 2010 passed in favour of the respondent was stayed by the order dated 31st July 2014. This Court held that the respondent herein is entitled to interim maintenance at the rate of Rs.10,000/- pr month from the date of filing of the said civil

applications i.e. with effect from 8th July 2016 and accordingly directed the petitioner to pay maintenance with effect from 1st July 2016. Division Bench permitted the respondent herein to take out a separate application towards expenses incurred on the education of the minor daughter-Pranjali.

8. It is held by the Division Bench that in so far as the Flat No.104 is concerned, the respondent and her two minor daughters are in possession and thus the petitioner herein cannot be disturbed their possession. The petitioner made a statement that without seeking leave, the petitioner will not transfer and/or create any third party interests in respect of Shop No.9 and the said flat no.104. Division Bench directed the petitioner to pay maintenance @Rs.10,000/- per month to the respondent-wife from 1st July 2016 on or before the 15th day of every calender month and granted various interim reliefs.

9. On 20th February 2016, the respondent herein filed a Darkhast application before the Family Court for recovery of an amount of Rs.3,90,000/- against the petitioner being arrears of maintenance for the period between 12th August 2013 and 11th October 2015 @Rs.15,000/- per month. The said execution application was adjourned from time to

time. On 5th November 2016, the respondent herein filed an application in the said execution application inter alia praying for an attachment of the salary of the petitioner (judgment debtor) to the extent of Rs.25,000/- per month and to furnish the detail address of the employer of the petitioner to whom the writ of attachment is required to be addressed.

10. On the same day, the petitioner herein filed an application for seeking adjournment in the said Darkhast application alleging that only an amount of Rs.48,000/- was in arrears payable to the respondent by the petitioner. It was mentioned that the petitioner would file all the receipts and bank statement on record to show that he had allegedly complied with the order. It was alleged that on 25th October 2016, the petitioner had paid a sum of Rs.24,200/-. It was alleged that he was not aware of the High Court's order and that his matter was in the High Court on 17th November 2016. The said adjournment was opposed by the respondent herein on the ground that the petitioner was just protracting the issue of payment of arrears of maintenance on 16th February 2015 without any reasons and frustrating the efforts made by the respondent for executing the decree.

11. The executing Court passed an order on the said application on 5th November 2016 after hearing both the parties. The respondent's advocate produced a copy of the order dated 19th August 2016 passed by this Court in family court appeal directing the petitioner to clear arrears of maintenance of Rs.4,00,000/- within four weeks from the date of the said order. The petitioner herein admitted that he had not cleared those arrears as per the directions of this Court. It was observed in the said order that this act on the part of the petitioner was a gross contemptuous. He had committed default deliberately. The executing Court observed that the petitioner was fully aware of the fact that he has to clear the arrears of maintenance. Mr.Teli had appeared for the petitioner earlier though had not filed vakalatnama on record. The executing Court observed that though the petitioner was fully aware of the fact that he has to clear arrears of maintenance, he was avoiding to clear the arrears.

12. The executing Court accordingly rejected the application for adjournment made by the petitioner. The executing Court passed a separate order in so far as the application made by the respondent herein for attachment of salary of the petitioner to the extent of Rs.25,000/- per month is concerned. The respondent herein made an oral application to attach salary of the petitioner. The respondent produced a copy of the

order dated 19th August 2016. After considering the order passed by Division Bench of this Court on 19th August 2016, the executing Court allowed the oral application of the respondent for attachment of the salary of the petitioner which was much more than the amount attached which was mentioned by the learned advocate representing the respondent and not denied the petitioner. The executing Court accordingly issued a warrant of attachment of Rs.25,000/- per month from the salary of the petitioner till recovery of Rs.4,00,000/-. The respondent thereafter furnished the address of the employer of the petitioner by filing pursis before the executing Court. These two orders passed by the executing Court both dated 5th November 2016 are impugned by the petitioner in this writ petition. There was no ad-interim relief granted by this Court in this writ petition.

13. Mr.Warunjikar, learned counsel for the petitioner invited my attention to the order passed by the Family Court granting order of interim maintenance dated 8th September 2010, order dated 30th July 2014 refusing to modify the order dated 8th September 2010 and directing that the said application for modification will be heard with main petition. He also invited my attention to various orders passed by Division Bench of this Court in Family Court Appeal No.18 of 2016.

14. It is submitted by the learned counsel that the respondent made an oral application for attachment of the salary of the petitioner without disclosing any amount of salary which was drawn by the petitioner. The executing Court decided the said oral application for attachment of salary of the petitioner without giving any opportunity to the petitioner to file a reply to the said oral application and to place on record the correct amount of salary which was drawn by the petitioner. He submits that without giving an opportunity to the petitioner to file a reply to the oral application, the executing Court passed an order of attachment of salary of the petitioner in the sum of Rs.25,000/- per month till the entire decretal amount recovered in the sum of Rs.4,00,000/-.

15. In his alternate submission, learned counsel submits that take home salary of the petitioner was already mentioned in paragraph 12 of the order passed by Division Bench of this Court on 24th November 2016. He submits that in view of the order passed by the executing Court for attachment of salary of the petitioner in the sum of Rs.25,000/-, there is humiliation meted out to the petitioner in the place of his employment. He submits that the main petition is still pending.

16. Learned counsel appearing for the respondent, on the other hand, submits that the Family Court had already passed an order on 8th September 2010 against the petitioner to pay interim maintenance @Rs.10,000/- per month to the respondent and Rs.5,000/- per month to her minor daughter-Pranjali from the date of her application made by the respondent i.e. 12th October 2009 till the date of the said order and also to pay interim maintenance as ordered to the respondent and her minor daughter-Prajali on or before 16th day of every month. She submits that the application for modification of the said order dated 8th September 2010 filed by the petitioner was directed to be heard along with main petition and the said order dated 8th September 2010 has not been modified. She submits that since the petitioner did not comply with the said order of interim maintenance, the respondent filed an execution application before the Family Court under Order XXI Rule 11(2) of the Code of Civil Procedure, 1908 on 20th February 2016 and served a copy of the said application upon the petitioner. She submits that the petitioner however did not pay any amount inspite of the said execution application filed by the respondent on 20th February 2016 and took various adjournments in the said execution proceedings from time to time.

17. My attention is also invited to roznama annexed at pages 35 to 38 of the writ petition. Learned counsel also invited my attention to the orders passed by Division Bench of this Court on 19th August 2016, 20th September 2016 and 18th October 2016. She submits that the petitioner was specifically directed to clear arrears of maintenance of Rs.4,00,000/- by an order dated 19th August 2016. By an order dated 20th September 2016, Division Bench of this Court directed the petitioner to file affidavit stating therein that he has cleared all arrears of maintenance which was to be paid during the pendency of marriage petition before the Family Court within two weeks from the date of the said order dated 20th September 2016. She submits that the petitioner however did not comply with the said order dated 20th September 2016 as well as the order dated 19th August 2016 and did not bother to file affidavit-in-reply stating that he has already paid arrears of maintenance. She also invited my attention to the detailed order passed by this Court passed by Division Bench of this Court on 24th November 2016 directing the petitioner to pay maintenance of Rs.10,000/- per month from 1st July 2016.

18. It is submitted that the respondent had filed an application for execution of the said order passed by the Family Court which had

attained finality. The said application was pending before the executing Court from February 2016 till the application was made by the respondent on 5th November 2016 orally for issuing warrant of attachment for attaching the salary of the petitioner to the extent of Rs.25,000/- per month. She submits that the petitioner made an application for seeking adjournment on frivolous grounds. She submits that the executing Court has rightly considered the order passed by this Court directing the petitioner to clear arrears of Rs.4,00,000/- and since the same were not cleared by the petitioner, the executing Court has rightly issued warrant of attachment of Rs.25,000/- from the salary of the petitioner till decretal amount was recovered. She submits that pursuant to the said order dated 5th November 2016, the respondent has already recovered substantial amount. The decree would be fully marked satisfied by end of March 2018 if the said amount is continued to be deducted from the salary of the petitioner.

19. Mr.Warunjikar, learned counsel for the petitioner in rejoinder submits that the amount of salary of the petitioner drawn was already on record before the Division Bench of this Court. He submits that if the impugned order passed by the executing Court is not stayed, this writ petition would be infructuous.

20. There is no dispute that the Family Court had passed an order on 8th September 2010 directing the petitioner to pay interim maintenance @Rs.10,000/- per month to the petitioner and Rs.5,000/- per month to her minor daughter-Pranjali with effect from 12th October 2009 and also to pay interim maintenance as directed in the said order on or before the 16th day of every month. The said order was not modified in the application for modification made by the petitioner and was directed to be heard along with the main petition.

21. Division Bench of this Court passed an order on 19th August 2016 directing the petitioner to clear the arrears of maintenance of Rs.4,00,000/- within four weeks from the date of the said order after hearing of the learned counsel appearing for both the parties. Though this Court directed the petitioner to file an affidavit within two weeks from the date of the order dated 20th September 2016 stating that he had cleared all arrears of maintenance which was to be paid during the pendency of marriage petition before the Family Court, admittedly no such affidavit came to be filed by the petitioner in compliance with the order dated 20th September 2016. In these circumstances, in my view, the respondent was entitled to file an application for execution of the order dated 8th September 2010 and decree dated 19th October 2015 for

seeking recovery of arrears of Rs.3,90,000/-.

22. A perusal of the roznama of the execution application clearly indicates that the petitioner was present before the executing Court from time to time. The petitioner did not dispute the amount claimed by the respondent in the execution application nor produced any proof that he had already paid any amount of maintenance under the said order and decree passed by the Family Court. In these circumstances, the respondent made an oral application in the said execution application for attachment of salary of the petitioner. The petitioner also filed frivolous application for seeking adjournment alleging that according to the petitioner, only a sum of Rs.48,000/- was in arrears. Though the direction was issued by the Division Bench of this Court to the petitioner to file affidavit on record the amount, if any, was paid by the petitioner and that arrears were cleared by him, no such affidavit was filed by the petitioner. The executing Court, in my view, has thus rightly considered the order passed by this Court and the order passed by the Family Court granting interim maintenance and also decree passed against the petitioner. The executing Court has rightly rejected the application filed by the petitioner for seeking adjournment of the said application by recording detailed reasons.

23. In so far as the submission of the learned counsel for the petitioner that no such oral application could be made for seeking attachment of salary of the petitioner is concerned, a perusal of the application for execution filed by the respondent clearly indicates that the respondent had prayed for enforcement of decree against the petitioner and had given address of the employer of the petitioner. The respondent had also prayed for issuing a warrant against the petitioner.

24. A perusal of the order dated 5th November 2016 passed by the executing Court indicates that the executing Court has rightly considered the order passed by the Division Bench of this Court directing the petitioner to clear the arrears of Rs.4,00,000/- within four weeks which order was ex facie flouted by the petitioner. In these circumstances, I am not inclined to accept the submission of the learned counsel for the petitioner that no such order for attachment of salary of the petitioner in execution of decree could have been passed by the executing Court on oral application made by the respondent. It is not in dispute that the respondent had already filed an application for execution of decree against the petitioner under Order XXI Rule 11(2) of the Code of Civil Procedure, 1908.

25. It is not in dispute that the said order dated 5th November 2016 was not set aside by this Court and the said order till date has been substantially implemented. It is not in dispute that the decree holder would be able to execute the entire decree by end of March 2018.

26. In so far as the submission of the learned counsel for the petitioner that the respondent had not disclosed the salary of the petitioner before the executing Court and thus the executing Court could not have been passed the order of recovery of Rs.25,000/- from the salary of the petitioner is concerned, learned counsel for the petitioner does not dispute that the salary of the petitioner was much more than Rs.25,000/- per month. At the same time, learned counsel for the petitioner invited my attention to the order dated 24th November 2016 passed by Division Bench of this Court in Civil Application Nos.23 of 2016 and 200 of 2016 referring to paragraph 56 of the impugned judgment and decree that as of July 2012, the gross salary of the petitioner was Rs.62,891/- and take home salary in July 2012 was Rs.38,755/-. Division Bench also observed that as observed by the learned Judge of the Family Court, the salary of the petitioner must have been substantially increased. In my view, this submission of the learned counsel for the petitioner is inconsistent with his earlier submission that the amount of salary drawn

by the petitioner was not disclosed before the executing Court and thus no order of attachment in the sum of Rs.25,000/- could be passed by the executing Court.

27. In my view, the petitioner was in breach of the order passed by the Division Bench. The petitioner did not file any affidavit before the Division Bench of this Court in support of his contention that his client had already cleared the arrears of maintenance. During the course of hearing of this petition at one stage, the petitioner appears to have submitted a payment chart. Learned counsel for the petitioner however could not substantiate the said chart produced by the petitioner to show that the petitioner has already made payment of maintenance to the respondent in compliance with the interim order passed by the Family Court. No cognizance thereof thus can be taken by this Court at this stage. The petitioner did not produce any proof of payment alleged to have been made by the petitioner in writ petition even at this stage. In my view, the petition is totally devoid of merits. No interference is thus warranted with the impugned orders passed by the executing Court.

28. Writ petition is accordingly dismissed. There shall be no order as to costs.

R.D. DHANUKA, J.