

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

WRIT PETITION NO. 11276 OF 2017

Naveen Amritji Tripathi	...	Petitioner.
V/s.		
Smt.Hema Navin Tripathi	...	Respondent.

- Mr.Manish M. Jain i/b. S.M. Jain & Associates for Petitioner.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 9th OCTOBER, 2017.

P.C. :-

1] Heard Mr.Jain, learned counsel for the Petitioner.

2] The Petitioner-husband, by this petition, challenged the order dated 17/10/2016 passed by 13th Joint Civil Judge Senior Division, Thane in M.P. No.124 of 2010. By the impugned order, the trial Court has granted maintenance *pendent lite* and the expenses of the proceedings under Section 24 of the Hindu Marriage Act to the Respondent-wife at the rate of Rs.5,000/- per month.

3] The submission of learned counsel for the Petitioner is

that, as per the order passed in proceeding under the Protection of Women From Domestic Violence Act, 2005 (D.V. Act) bearing O.M.A. (D.V.) No.472 of 2008, the Respondent-wife was awarded Rs.5,000/- towards the rent, Rs.7500/- towards the maintenance and Rs.5,000/- by way of cost of that proceeding. When he challenged the said order, by filing Criminal Appeal No.131 of 2015, the learned Appellate Judge has directed him to pay Rs.9,000/- per month only till disposal of the appeal.

4] It is submitted by learned counsel for the Petitioner that despite the fact that the Petitioner is paying an amount of maintenance at the rate of Rs.9,000/- per month as reduced by the Appellate Court under D.V. Act, in this proceeding again the trial Court has granted additional amount of Rs.5,000/- per month towards the maintenance *pendent lite* and the expenses of the proceeding under Section 24 of the Hindu Marriage Act and that too from the date of the application i.e. 31/01/2015. It is further submitted by learned counsel for the Petitioner that because of the various proceedings initiated and pending between the parties, the Petitioner has lost his job, he is having no source of income and therefore, the impugned order passed by the trial Court needs to be

set-aside.

5] Perusal of the impugned order passed by the trial Court reveals that the trial Court has considered the fact that the Petitioner is doing the business of construction. He is a builder by profession and earning Rs.3,00,000/- per month. He has also solemnized second marriage during subsistence of this one and had a son from the second wedlock. The Petitioner himself has not stated what is his source of income and how he is maintaining his livelihood if he is unemployed. As a matter of fact, the Respondent has claimed the monthly maintenance at the rate of Rs.1,00,000/- per month. However, having regard to the fact that the Respondent has not produced on record any documentary evidence about the income of the Petitioner and also considering that she was awarded monthly house rent of Rs.5,000/- and monthly maintenance of Rs.7,500/- total Rs.12,500/- per month in proceedings under D.V. Act, the trial Court has granted only the amount of Rs.5,000/- per month towards alimony *pendent lite* and expenses of the litigation.

6] Needless to state that, it is the Petitioner, who has filed this petition for divorce and therefore, the Respondent has to incur the litigation expenses, like engaging the counsel and other

consequential expenses and hence having regard to the earning and financial capacity of the Petitioner, it can hardly be said that the additional amount of Rs.5,000/- as awarded by the trial Court after taking in to consideration the amount awarded in the proceedings under the D.V. Act can hardly be called unreasonable, exorbitant or excessive so as to warrant interference therein.

7] The normal rule is that the amount of maintenance is to be awarded from the date of application and no ground is made out to take a departure or to deviate from the normal rule. Therefore, on this count also no grounds are made out to interfere in the impugned order of the trial Court.

8] As the trial Court order thus does not suffer from any jurisdictional error; the Petition, therefore, stands dismissed.

9] At this stage, learned counsel for the Petitioner submits that the petition is part-heard before the trial Court and the cross-examination of the Petitioner is in progress, hence the trial Court may be directed to expedite the hearing of the petition.

10] The interest of justice always requires that such matrimonial proceedings should be decided at the earliest and as

expeditiously as possible. In view thereof, the trial Court is directed to decide the petition pending before it as expeditiously as possible, provided both the parties and their learned counsel extend their co-operation and not seek adjournments on flimsy grounds.

(DR. SHALINI PHANSALKAR-JOSHI, J.)