

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

WRIT PETITION NO. 374 OF 2017

Anil Nijaguni Kuntoji

...Petitioner

Versus

Sandhya Anil Kuntoji

..Respondent

Mr.Samir Kumbhakoni for the Petitioner.

Mr.Ashok B. Tajane for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 06th DECEMBER 2017

P.C.

1. Heard Mr.Samir Kumbhakoni for the Petitioner and Mr.Ashok B. Tajane for the Respondent.

2. The petitioner-husband challenges the order dated 25-10-2016 by which the Family Court, Solapur has awarded maintenance of Rs.3,000/- to the minor son and Rs.7,000/- to the wife.

3. Mr.Kumbhakoni, the learned counsel for the petitioner submits that there is no dispute that the petitioner has studied upto 12th standard. There is no material on record to indicate that the

petitioner is doing any job or earning any income. Mr.Kumbhakoni submits that the petitioner's mother owns her shop and the petitioner assists her mother in running the said shop. He submits that the Family Court has erred grossly in observing that the petitioner is capable of doing some kind of business and physical work and earns Rs.15,000/- to Rs.18,000/- per month. He submits that such a finding is totally perverse since, there is no material on record to back the same.

4. On perusal of the record and the impugned order, it cannot be said that the impugned order suffers from any jurisdictional error or that the findings recorded therein suffers from perversity.

5. The petitioner, has not at all been candid to the Court. The petitioner has not indicated what is his income from the shop or what is his income by assisting his mother in running the business at the shop. It cannot be accepted that the petitioner is earning absolutely nothing.

6. There is no material on record that the wife is earning any income. The child lives with the wife. There is no material on

record that the petitioner has provided for the residence of the wife and the minor son. In these circumstances, there is nothing unreasonable in the Family Court awarding maintenance of Rs.10,000/- in all to the wife and to the minor son. The baldly plea that the petitioner has no income or has no means of earning any income cannot be accepted. The Hon'ble Supreme Court, in the case of *Shamima Farooqui Vs Shahid Khan*¹ at paragraph No.14 has made the following observations in relation to the pleas advanced by husband that they have no means to pay on the ground that they do not have job or that their business is not doing well.

“14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs.17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind [Section 125 CrPC](#) is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that

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she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of [Section 125 CrPC](#), it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

7. Mr.Kumbhakoni submits that there should be some deduction from the maintenance amount. Had the petitioner been candid to the Family Court and indicated truly and faithfully his precise income, such a plea would have been considered. However, on the basis of petitioner's bald assertion that he earns nothing, there is no case made out to reduce the amount of interim maintenance. It is to be noted that the respondent-wife has to take care of minor son and the petitioner has not provided for any residence to the wife as well as minor son. Thus construed there is

no case made out even to reduce the interim maintenance amount.

8. For the aforesaid reasons, this petition is dismissed.

There shall be no order as to costs.

(M. S. SONAK, J.)