

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1092 OF 2017

Saybanna Nagnath Kamale ... Petitioner
Vs.
Sneha Saybanna Kamale ... Respondent

Mr. Raghvendra B. Kulkarni for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : APRIL 13, 2017

P.C. :

Heard Mr. Kulkarni, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 06.10.2016 passed by the learned Civil Judge, Senior Division, Solapur below exhibit-14 in H.M.P. No.01 of 2016. By that order, the learned trial Judge allowed the application made by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act') and directed the petitioner-husband to pay interim maintenance of Rs.4,000/- per month with effect from 30.12.2015 till the proceeding is concluded. Petitioner is also directed to pay costs of Rs.1,000/- to the respondent and the learned trial Judge has imposed condition that petitioner will not be allowed to proceed with the case unless and until the order is satisfied.

3. Mr. Kulkarni submitted that by order dated 21.11.2016, petitioner is placed under suspension and as per Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, he is paid 50% salary allowance as also dearness allowance. Mr. Kulkarni has tendered petitioner's salary slip of February, 2017. He submitted that the gross

salary of the petitioner is Rs.15,471/-. The Government recoveries were to the tune of Rs.4,375/- and non Government recoveries were to the tune of Rs.5706/-. In other words, his net pay is Rs.5390/- per month. It is, therefore, not possible for him to pay maintenance as ordered by the learned trial Judge. He, therefore, submitted that the impugned order deserves to be set aside.

4. I have considered the submissions advanced by Mr. Kulkarni. I have also perused the material on record. A perusal of the impugned order shows that in paragraph 6, the learned trial Judge noted that no pay-slip was placed on record by the petitioner. Having regard to the fact that the petitioner is working as a police constable, the learned trial Judge has awarded maintenance @ Rs.4,000/- per month. In paragraph 6, the learned trial Judge noted that respondent-wife is totally incompetent to face the civil litigation and to maintain herself. There is also no sufficient evidence in order to show net income of the petitioner from other sources.

5. It is evident that petitioner was placed under suspension as per order dated 21.11.2016. Before the learned trial Judge, the salary slip of the petitioner was not produced. The learned trial Judge observed that petitioner is working as police constable and his salary by all means shall not be less than Rs.25,000-30,000/- per month. Mr. Kulkarni produced salary slip of February, 2017, which is obviously after the petitioner was placed under suspension by order dated 21.11.2016.

6. For the reasons recorded in paragraph 6 of the impugned order, I do not find any fault with the impugned order. Hence, Petition fails and the same is dismissed. It is however open to the petitioner to move the trial Court for modification of the order on the basis of the subsequent

development, namely, his suspension by order dated 21.11.2016. The learned trial Judge will not entertain such application unless and until entire arrears are cleared by the petitioner. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab