

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

WRIT PETITION (ST). NO.35053 OF 2016

Mohan Narayan Gavande .. Petitioner

vs.

Vaishali Mohan Gavande .. Respondent

Mr.Pritesh K. Bohade for the petitioner

Mr.Sanjay A. Ghaisas for the respondent

**CORAM : K. K. TATED, J.
DATE : JUNE 21, 2017**

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 20.10.2016 passed by 2nd Joint Civil Judge, Senior Division, Kalyan below Exhibit-4A in Marriage Petition No.680 of 2016 allowing respondent wife's application for interim maintenance under section 24 of the Hindu Marriage Act, 1955 and for accommodation under section 19, 20 and 23 of the Protection of Women from Domestic Violence Act, 2005.
- 3 By the impugned order, the Trial Court awarded sum of Rs.10,000/- p.m. to the wife and Rs.5,000/- per month to the daughter Vaishnavi from the date of application on the basis of Exhibit-20, which

shows that the petitioner is a Computer Engineer and getting salary upto Rs.1,00,000/- per month.

4 The learned counsel for the petitioner submits that the court below erred in coming to the conclusion that the respondent is wedded wife of the petitioner. He submits that the petitioner's wife's name is Malati Mohan Gavande. In support of this contention, he relies on Marriage Certificate dated 27.12.2012. He submits that the respondent created bogus document i.e. Marriage Invitation Card, Certificate of Registration of Marriage and Photographs of his marriage. He submits that the petitioner specifically contended before the Trial Court that Vaishali is not her daughter. He submits that petitioner husband specifically made a statement before the Trial Court that he is ready to go for DNA test to decide whether Vaishali is her daughter or not. In spite of all these observations, the Family Court allowed the Appeal filed by respondent wife and directed petitioner to pay sum of Rs.10,000/- per month to the wife and Rs.5,000/- per month to the daughter. He submits that petitioner is challenging the order on following grounds:

- “a) That the impugned order is bad in law and against the principles of natural justice.
- b) That the impugned order is passed without applying proper frame of mind.
- c) The impugned order is erroneous and passed against the merits of the case.
- d) It is significant to note that after perusal of the documents annexed with this petition it can be seen that the Respondent is not the legally wedding and he had married

Sau.Malti way back in the year 2006. Therefore the question of giving maintenance does not arise.

e) That the Ld.Judge has not led the evidence properly and also the issues are not properly framed i.e. the main issue of 'whether the Respondent is the legally wedded wife of the Petitioner?' is not framed.

f) It is pertinent to note that the Ld.Judge has not appreciated even a single averment of the Petitioner and passed erroneous order in stereotyped manner which is against Law and principle of natural Justice.

g) Moreover from the list of documents and all other documents annexed with the present petition it can be clearly seen that the Petitioner married to his Legally wedded wife 8-9 years prior to the alleged marriage with the Respondent.

h) It is significant to note that even the wife of the Petitioner on oath has filed her affidavit before the lower court stating that the Respondent has filed false case taking advantage of the simple nature of the Petitioner. Such important fact the Ld.Judge failed to appreciate and has passed erroneous order which deserved to be set aside with costs.

i) It is pertinent to note that the entire family of the Petitioner are habitual in such type of activities i.e. the sister of the Respondent also has cheated her husband and litigation also going on between them, the brother and father of the Respondent have criminal antecedents and the respondent with intention to grab money from the Petitioner has trapped the Petitioner in the present case.

j) The Ld.Judge ought to have held that the case of the

Respondent is not tenable as she is not the legally wedded wife of Petitioner and would have rejected the same at the initial stage itself, instead of doing the same the Ld.Judge directed the Petitioner to pay alimony pendent lite of Rs.10,000/- to the Respondent and Rs.5,000/- to the alleged daughter with following due process of law i.e. the DNA test etc. Therefore, the impugned order deserves to be dismissed in toto.

k) The petitioner have very good case on merits and the impugned order deserved to be quashed and set aside with compensatory cost.”

5 On the basis of these submissions and the grounds raised in the petition, the learned counsel for the petitioner submits that the impugned order is required to be set aside.

6 On the other hand, the learned counsel for the respondent submits that respondent placed on record copy of marriage invitation card, certificate of registration of marriage, photographs of marriage. He submits that Family Court considering these documents and documents at Exhibit-20 rightly held that the respondent wife is entitled maintenance of Rs.10,000/- per month and her daughter Rs.5,000/- per month. He submits that petitioner has not brought on record any cogent evidence to show that respondent wife is not his wife. Hence, there is no substance in the present Writ Petition and same is required to be dismissed.

7 I have heard both the counsel at length.

8 It is to be noted that in the present proceedings, respondent wife filed Marriage Petition No.680 under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. During the pendency of the present proceeding she preferred application for maintenance and accommodation. Trial Court specifically recorded in paragraph 6 of the impugned order that respondent wife placed on record marriage invitation card, Certificate of Registration of Marriage and photographs of marriage with the petitioner. On the basis of these documents, Family Court prima facie held that respondent is entitled maintenance per month along with her daughter. At the time of deciding the quantum of compensation, Family Court mainly relied on Exhibit-20 which shows that petitioner is Computer Engineer and getting salary upto Rs.1,00,000/-.

9 Considering these facts on record, I am of the opinion that respondents had made out a case as recorded by Trial Court in the impugned order dated 20.10.2016. Hence, I do not find any substance in the present Writ Petition and same is required to be rejected summarily.

10 It is to be noted that petition filed by the respondent wife under section 9 of the Hindu Marriage Act, 1955 is pending for hearing and final disposal on its own merits. Advocate for the respondent submits that petitioner already filed written statement.

11 Considering the submissions made by both the counsel and copy of Marriage Petition No.680 of 2016, I am of the opinion that same is required to be heard as early as possible. Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) Hearing of Marriage Petition No.680 of 2016 is expedited.
- c) Amount deposited by the petitioner husband in the Registry of this court can be withdrawn by the respondent wife along with interest if any without furnishing any security.

(K.K.TATED, J.)