

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO. 9659 OF 2017

SWAPNIL ASHOK WAKCHOURE

VERSUS

ARTI SWAPNIL WAKCHOURE

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Advocate for Petitioner : Mr. R. A. Tambe

Advocate for Respondent : Mr. C. T. Jadhav

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CORAM : V. K. JADHAV, J.

DATED : 28th MARCH, 2018

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. I find no substance in this writ petition. The respondent/wife has filed Hindu Marriage Petition no. A-543 of 2016 before the Family Court, Aurangabad for restitution of conjugal rights and during pendency of said Hindu Marriage Petition, has filed application Exh.12 for interim maintenance till disposal of the aforesaid Hindu Marriage Petition.
3. The respondent/wife has claimed an amount of Rs.15,000/- per month as an interim maintenance under the

provisions of Section 24 of the Hindu Marriage Act, 1955. The petitioner/husband has strongly resisted the said application by filing his say. However, the learned Principal Judge, Family Court, Aurangabad by impugned order dated 23.05.2017 has directed the petitioner to pay Rs.12,000/- per month to the respondent/wife towards her maintenance, including the medical expenses from the date of application. Hence, this writ petition.

4. Learned counsel for the petitioner/husband submits that an opportunity of being heard was not given to the petitioner, as his counsel was not present on the date when the impugned order came to be passed. Learned counsel submits that the absence of the petitioner/husband was also recorded in the Roznama dated 23.05.2017. Learned counsel submits that the respondent/wife has claimed an interim maintenance of Rs.15,000/- per month, however, in the Hindu Marriage Petition itself in para no.4 specifically contended that there is nothing in the name of the petitioner/husband and that gymnasium is not exclusively run by him and it is in partnership and the four-wheeler vehicle is also in partnership. Learned counsel submits

that in the light of said pleadings, the respondent/wife now cannot claim the maintenance on the basis of his income from gymnasium etc. Learned counsel submits that the amount of interim maintenance is excessive and the learned Principal Judge, Family Court even though observed that there is no income proof on record, passed the order directing the petitioner/husband to pay an amount of Rs.12,000/- per month to the respondent/wife.

5. Learned counsel for the respondent/wife submits that even as per Roznama, counsel appearing for the parties were heard on 11.05.2017 and only the next date was given for the reason that even though the counsel representing the petitioner husband has relied upon certain citations, failed to tender the copies of the said citations. Learned counsel submits that even the learned Principal Judge, Family Court, Aurangabad has specifically recorded in the order that learned Judge has heard the counsel appearing for the respective parties. Learned counsel submits that the respondent/wife has claimed interim maintenance on the basis that the petitioner/husband is a contractor by occupation and he is also running a gymnasium. Further he has

also given on rent the rooms of his residential house and he is also earning by giving on rent one loading rickshaw and a four wheeler vehicle. Learned counsel submits that even the petitioner/husband himself has disclosed on matrimonial site his income from his occupation as a contractor, gymnasium/health club at Rs.50,000/- to 60,000/- per month. Learned counsel submits that the court below, therefore, rightly granted the interim maintenance. No interference is required.

5. I do not find any substance in the submission that no opportunity was given to the counsel appearing for the petitioner before the Family Court. Learned Principal Judge, Family Court, Aurangabad is a senior judge, has specifically recorded in the impugned order below Exh.12 that he has heard learned advocate for respective parties and also recorded that respondent (present petitioner) has filed his written argument at Exh.22. Even in the Roznama dated 11.05.2017 there is specific reference that the learned Judge has heard the arguments.

6. It appears that the petitioner/husband himself has disclosed his income on the matrimonial site at Rs.50,000/- to

60,000/- per month and he has shown his occupation as a contractor and also running gymnasium/health club. It is also the case of the respondent/wife that the petitioner/husband has given on rent certain rooms of his residential house and he also used to give on rent the loading rickshaw and one four-wheeler vehicle. Though there is no documentary evidence placed on record, the respondent/wife, who had cohabited with the petitioner/husband for some period, would be the best witness to tell about his occupation and income. Further, the petitioner/husband himself has disclosed his income on the matrimonial site. I do not think that on the basis of certain averments made in the Hindu Marriage Petition the petitioner/husband can now say that the respondent/wife herself has admitted in her petition that the petitioner/husband is not running the gymnasium or he has shown his false occupation as a contractor.

7. In view of above, I do not find any substance in this writ petition. Writ petition is liable to be dismissed. However while disposing of this writ petition, the learned Principal Judge, Family Court, Aurangabad can be directed to dispose of the

pending Hindu Marriage Petition No. A-543 of 2016 as early as possible. Hence, I proceed to pass the following order.

ORDER

- I) Writ petition is hereby dismissed. No costs.
- II) The learned Principal Judge, Family Court, Aurangabad is hereby directed to dispose the pending Hindu Marriage Petition No. A-543 of 2016 as expeditiously as possible, preferably within a period of three months from today.
- III) It is made clear that the observations made in this order are only to the extent of interim maintenance.
- IV) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/