

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13468 OF 2017

Ganesh Subhash Devare,
Age-34 years, Occu-Service,
R/o Javada, Taluka Shahada,
Dist. Nandurbar

– PETITIONER

VERSUS

Harshada @ Kavita Ganesh Devare,
Age-31 years, Occu-Household,
R/o C/o Parashuram Bhika More,
Ramnagar, Plot No.50, Sector 2,
Wadibhokar Road, Deopur, Dhule,
District Dhule

– RESPONDENT

Mr.A.S.Savale, Advocate for the petitioner.
Mr.V.P.Raje, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/12/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/husband is aggrieved by the order dated 07/03/2017 passed by the Trial Court by which his application Exh.22 seeking a stay to the order dated 06/04/2016 granting maintenance to the respondent/wife, has been rejected.

3. The case of the petitioner, who is an Officer with the Border Security Force is that the respondent/wife has been granted interim maintenance @ Rs. 5,000/- per month in her case filed u/s 125 of the Cr.P.C. In HMP No.62/2013, she has been granted maintenance of Rs.3,000/- per month by the order dated 06/04/2016. Reliance is placed on the judgment delivered by the Hon'ble Apex Court in the matter of Sudeep Chaudhary Vs. Radha Chaudhary [AIR 1999 SC 536], the judgment delivered by this Court in Tapiram s/o Pundlik Chaudhari Vs. Rajni @ Padmabai Tapiram Chaudhari [2011(3) L.J.Soft (URC) 2] and the judgment delivered by this Court in Cri.Rev.Application No.203/2017 in the matter of Vishal s/o Rahesaheb Gore Vs. Sou.Aparna Vishal Gore and another decided on 13/06/2018 to support his contention that the maintenance amount granted in a subsequent proceeding can be adjusted with the maintenance amount awarded in an earlier proceeding.

4. Learned advocate for the respondent/wife submits that she would be entitled to 25% of the net salary which suffers certain statutory deductions in view of the judgment of the Hon'ble Apex Court in the matter of Dr.Kulbhushan Kumar Vs.Smt.Raj Kumari and another [1970(3) SCC 129] and in the matter of Kalyan Dey

Chowdhury Vs. Rita Dey Chowdhury Nee Nandy [(2017) 14 SCC 200].

5. I do not find that there could be any debate in so far as the legal aspect of the maintenance amounts granted in two different proceedings being adjustable. It is also not in dispute that barring statutory deductions, the maintenance amount to be paid to the wife should be befitting her status and her standard of living as the wife of such a husband who is occupying a post or position of respect. The Hon'ble Apex Court has therefore concluded in Kalyan Dey (supra) that the maintenance payable should be commensurate to the status of the wife and should be 25% of the net salary of the husband after statutory deductions.

6. In view of the above, if both the amounts are to be adjusted which would not necessarily and mandatorily need that the maintenance granted in the subsequent proceeding should be set off against or subtracted from the maintenance amount granted earlier, it would have to be reckoned as being adjustable so as to ensure that the limit of 25% is maintained. As such, considering the pronouncement of the Apex Court in Kalyan Dey (supra), the amount of permanent alimony must be befitting the status of the wife and the capacity of the spouse to pay the maintenance.

7. Learned Advocate for the respondent/wife has taken instructions that the salary of the petitioner today is about Rs.57,275/-. If statutory deductions are to be considered, the maintenance paid to the wife should be below 25% of his net salary. He is an Officer with the Border Security Force. The petitioner was called upon to state as to whether the petitioner desires to place on record his salary slip for the month of November 2018, it was canvassed that the maintenance amounts to be paid to the wife should not be more than 25% considering the law laid down in Kalyan Dey (supra). It was further submitted that even by adjusting the two maintenance amounts, the total would not travel beyond 25%. The petitioner would be satisfied if this Court makes such an observation.

8. Learned Advocate for the husband further submits that in case of an enhancement, there should be a finding on facts in view of the law laid down and without such findings, there shall not be an enhancement in the quantum of compensation. I find that the petitioner's submissions are pre-mature since neither has the wife as yet filed an application for enhancement, nor am I dealing with this petition treating it to be an enhancement of maintenance.

9. The word "adjust" and "adjustable" defined in the Oxford Dictionary would mean slightly altering the situation to make it more suitable or to make it work better, or to correct or improve a situation.

10. Considering the above, it needs to be noted that the maintenance granted to the respondent by the impugned order is Rs.3,000/- in addition to Rs.5,000/- granted in the proceedings u/s 125 of the Cr.P.C. This amount of Rs.8,000/- would still be less than 25% if the net salary is taken to be Rs.40,000/-. Learned Advocate for the wife at this juncture submits on instructions that the petitioner is receiving a net salary of Rs.52,448/- per month, after statutory deductions.

11. Considering the above and even by applying the principle of "adjustment" of the amounts of maintenance granted in two proceedings, the total maintenance being paid to the wife as interim maintenance is much below 25% of the net salary. As such, with this principle of 'adjustment' or 'adjustable' being made applicable, I do not find that the impugned order granting interim maintenance of

Rs.3,000/- in addition to the maintenance amount of Rs.5,000/- in another proceeding, could be said to be a perverse or erroneous order or likely to cause gross injustice to the petitioner.

12. This petition, being devoid of merit, is therefore dismissed. Rule discharged.

(Ravindra V.Ghuge, J.)