

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 10361 OF 2017

DIPAK S/O LAXMAN AVHAD
VERSUS
VARSHA W/O DIPAK AVHAD

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Advocate for Petitioner : Mr. Ambetkar Arvind G.
Advocate for Respondent-sole : Mr. A. N. Sabnis

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CORAM : V. K. JADHAV, J.
DATED : 28th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner-husband has filed Hindu Marriage Petition No. 400 of 2016 for a decree of divorce against the respondent-wife. The respondent-wife has filed an application Exhibit 11 in the pending H.M.P. for grant of interim alimony. The present petitioner has resisted the said application by filing his say at Exhibit 18. The learned Joint Civil Judge, Senior Division, Ahmednagar, by the impugned order dated 14.06.2017 passed below Exhibit 11, directed the petitioner-husband to pay interim alimony of Rs.4,000/- per month to the respondent and Rs.3,000/- per month to their minor son Yash since filing of the

application till the disposal of the pending H.M.P. alongwith costs of Rs.5,000/-. Hence this Writ Petition.

3. The learned counsel for the petitioner-husband submits that the respondent-wife has initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short, “the Act of 2005”) by filing Misc. Criminal Application No. 110 of 2016 and by order dated 05.12.2016 passed below Exhibit 4, the Judicial Magistrate, First Class, Shirur Kasar has directed the present petitioner-husband to pay interim maintenance of Rs.5,000/- per month to both the applicants in common, from the date of the order. Learned counsel submits that in that way, the petitioner-husband has to pay Rs.12,000/- per month when he is getting the salary of Rs.15,000/- to Rs.20,000/- per month by serving as a teacher.

4. Learned counsel for the respondent-wife submits that both the orders are passed as an interim maintenance and the petitioner-husband, being a teacher, is getting near about Rs.30,000/- per month as salary. The learned counsel submits that the petitioner-husband has agricultural land standing in the

name of his father and he resides in his own house in the village. Though the petitioner-husband is residing at Raigad District while serving as a teacher, he has no other responsibility except to maintain the respondent-wife and the minor son Yash. The learned counsel submits that the learned Joint Civil Judge, Senior Division, Ahmednagar has rightly passed the order. No interference is required.

5. After going through the impugned order, particularly para 13, it appears that the salary slip for the month of January 2017 came to be placed before the Court and the petitioner-husband is getting gross salary of Rs.34,311/- and after deductions, he is getting salary of Rs.22,676/-. The respondent-wife has to attend the dates of the pending H.M.P. in the Court at Ahmednagar and she resides at Village Tembhurni, Taluka Shirur Kasar, District Beed. The respondent-wife has a minor son. However, it appears that though both the parties were knowing about the order passed by the Judicial Magistrate, First Class, Shirur Kasar in respect of the interim maintenance under the Act of 2005, failed to bring the same to the notice of the learned Joint Civil Judge, Senior Division, Ahmednagar at the time of deciding the

application Exhibit 11. Consequently, the learned Judge has no occasion to consider that respondent-wife is already getting maintenance in the proceedings under the Act of 2005. In view of the same, this Writ Petition can be disposed of by modifying the impugned order to the extent of quantum. Hence the following order:

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order dated 14.06.2017 passed by the Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit 11 in H.M.P. No. 400 of 2016 is hereby modified to the extent of quantum and the petitioner is accordingly directed to pay interim maintenance of Rs.2,500/- (Rupees two thousand five hundred only) per month to the respondent and Rs.2,500/- (Rupees two thousand five hundred only) per month to the minor son.
- III. Except the modification as above, the rest of the order stands confirmed.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)