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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14157 OF 2017

Omshankar s/o Gajanan Agarkar PETITIONER
Age - 30 years, Occ - Service
R/o Plot No. 51, Kalaguru Dreamcity,
Near Bhalerao Nagar, Amalner
Taluka - Amalner, District - Jalgaon

VERSUS

Madhuri w/o Omshankar Agarkar RESPONDENT
Age - 25 years, Occ - Tailoring,
R/o C/o Suresh Tulshiram Pohankar
At - Isapur, Post - Wadi - Aadampur
Taluka - Telhara, District - Akola

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Mr. N. E. Deshmukh, Advocate for the petitioner
Mr. A. R. Vaidya, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 4th SEPTEMBER, 2018

ORDER :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by the consent.
2. The petition has been moved challenging order dated 13th September, 2017 passed by civil judge, senior division, Amalner on Exhibit- 10 in Hindu Marriage petition No. 169 of 2016, granting maintenance @ Rs. 8000/- per month to respondent-wife and daughter and Rs. 5000/- as expenses.

3. Mr N. E. Deshmukh learned advocate appearing for the petitioner submits that, marriage of petitioner and respondent was solemnized on 23rd May, 2013 and a daughter was begotten on 25th August, 2014.

4. Hindu Marriage Petition No. 169 of 2016 has been filed by the petitioner under section 13 (1) (i-a) of the Hindu Marriage Act, 1955 seeking divorce. Application Exhibit- 10 was filed by respondent in said Hindu Marriage Petition for maintenance pursuant to section 24 of the Hindu Marriage Act, 1955 stating that salary of the petitioner is Rs. 40,000/- per month and that petitioner is working on the post of cashier in Bank of Baroda at Amalner. These contentions of respondent were denied by the petitioner. On the other hand, it was contended that the respondent is educated and earning Rs. 10,000/- per month by conducting private tailoring classes at her parent's home, she is able to maintain herself and daughter. These contentions were not considered by the trial court. It had erroneously drawn adverse inference against petitioner that petitioner has accepted that he is employee in Bank of Baroda and ought to have produced documents in support of his contentions.

5. Mr. Deshmukh referring to salary slips purports to contend

that the petitioner's total salary is Rs.19,416/- per month out of which Rs. 9,564/- are deducted towards payment of loan. He further purports to submit that the petitioner is only bread earner in family and is having responsibility of his parents and other family members. His mother's regular medical expenditure is of Rs. 2000/- per month and he has to spend Rs. 2000/- on grocery items per month. In the circumstances, petitioner's take home salary is only Rs. 6500/- per month after deduction of these expenses. Additionally, the petitioner is required to attend criminal proceedings filed by the respondent at Telhara in Akola district. Therefore, it is difficult for the petitioner to pay maintenance @ Rs. 8000/- per month. It is submitted that the trial court ought to have considered that the quantum of the maintenance is to be fixed or arrived at taking into account several factors, such as, standard of living of wife, actual expenses that would be incurred by her and daughter who is yet not admitted to school. On the basis of surmises, conjectures and without application of judicial mind, the trial court has passed impugned order. Petitioner, as such, requests to quash and set aside impugned order and judgment.

6. On the other hand Mr. A. R. Vaidya learned advocate appearing for respondent contends that the respondent and her

daughter are residing at her parents' home and she does not have any source of income. The petitioner was promoted on the post of cashier in Bank of Baroda at Amalner and is earning handsome salary. Despite that, petitioner has ignored the respondent and daughter. Considering this fact trial court has granted maintenance Rs. 8000/- per month which is proper, reasonable and affordable to the petitioner. He, therefore, urges to dismiss the petition.

7. It appears that there is some dispute between the petitioner and his family members on one hand and the respondent on the other. The petitioner has accepted that he is employee of Bank of Baroda at Amalner, but has denied that he is working on the post of cashier and his salary is Rs. 40,000/- per month. In support of these submissions petitioner has placed on record medical bills, grocery bills etc, which indicate that the petitioner has responsibility of parents and other domestic and personal expenses. Petitioner tenders his salary slips for the months of April, 2018 to July, 2018 which show that his earning is around Rs. 25, 400/- and after deductions, the take home amount is around Rs. 19, 700/-.

8. There is no evidence on record showing that the respondent is earning. Giving reasonable allowance to expenses

claimed by petitioner, it does not appear that trial court is absolutely incorrect in granting maintenance, however, looking at the take home salary of the petitioner, some reasonable deduction would be required in the amount of maintenance granted by the trial court. In view of aforesaid, the impugned order needs modification.

9. As such, writ petition partly succeeds. Impugned order dated 13th September, 2017 passed by civil judge, senior division, Amalner, below Exhibit - 10 in Hindu Marriage Petition No. 169 of 2016 is modified and amount of Rs. 8000/- per month as granted by the trial court towards maintenance to respondent and daughter is reduced to Rs. 7000/- per month. Rest of impugned order is not disturbed.

10. Rule is made in absolute in aforesaid terms. Writ petition is disposed of.

[SUNIL P. DESHMUKH, J.]