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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8063 OF 2016

Sameer Ulhas Mirajkar

..Petitioner.

V/s.

Sau.Swati Sameer Mirajkar

..Respondent.

Mr.P.M.Arjunwadkar for the Petitioner.

Mr.P.D.Dalvi for the Respondent.

CORAM: M.S.SONAK, J.

DATE : DECEMBER 7, 2018

P.C.:-

Heard Mr.Arjunwadkar, learned counsel for the Petitioner and Mr.Dalvi, learned counsel for the Respondent.

2. Challenge in this petition is to the order dated March 5, 2016 by which the learned Family Judge, Kolhapur ordered the Petitioner to pay interim maintenance of Rs.10,000/- to the Respondent-wife and the minor daughter from the date of filing of the application seeking interim maintenance.

3. Mr.Arjunwadkar, learned counsel for the Petitioner

submits in terms of section 24(ii) of the Hindu Marriage Act, 1955 ('the Act' for short), the burden is on the Respondent-wife to show that she has no independent income sufficient for herself. He submits that in the present case, such burden has not been discharged by the Respondent-wife and the learned Family Court has erred in placing such burden upon the Petitioner.

4. Without prejudice to the aforesaid, Mr.Arjunwadkar submits that the learned Family Court in determining the interim maintenance should have considered only the basic salary of the Petitioner which was Rs.17,335/-. He submitted that the learned Family Court erred in taking into consideration the total earning of the Petitioner. He submits that allowances which are granted to the Petitioner are variable and there is no stability. He, therefore, submits that the allowances could never have been taken into consideration.

5. Mr.Arjunwadkar further submits that the learned Family Court has not taken into consideration the circumstance that the Petitioner is required to take care of his mother. For all these reasons, Mr.Arjunwadkar submits that the impugned order is

required to be set aside.

6. Mr.Dalvi, learned counsel for the Respondent defends the order on the basis of reasons stated therein. He submits that in fact, the award is on the lower side taking into consideration the interim maintenance if Rs.10,000/- per month is awarded in favour of the daughter as well as the wife. He submits that this petition may be dismissed.

7. The rival contentions falls for my determination.

8. Section 24(ii) of the Act indeed provides that where in any proceedings under this Act, it appears to the Court that the wife has no independent income sufficient for her, it may grant the application of the wife ordering the husband to pay interim maintenance as well as expenses of the petition. In the present case, the Respondent-wife has made detailed averments supported by an affidavit that she has no independent source of income.

9. It is the case of the Petitioner that the Respondent is a Fashion Designer and, therefore, has source of income. There is absolutely no material produced on record by the Petitioner to substantiate this allegation. Accordingly, it cannot be said that the

Respondent is not entitled to interim maintenance. The Respondents have made out a case for grant of interim maintenance.

10. The second contention that only the basic salary was required to be considered by the Family Court is especially untenable. The salary slip produced by the Petitioner indicates that the Petitioner's income in his capacity as an Assistant Manager in Powerico Ltd., Kolhapur is as follows:-

Earnings	Payment	Arrears	Deduction	Amount	Balance	Sign
BASIC	17,335.00	0.00	MHPIX	200.00		
HRA	3,465.00	0.00	PF	2080.00		
MED	1,735.00	0.00				
LTR	1,385.00	0.00			Round off : 0.00 Paid add: 0.00 net amt. 90.00	
FOO CONY	10,750.00					
TOTAL EARNINGS 34,670.00			TOTAL DEDUCTIONS 2280.00			

11. The allowances like H.R.A., medical, etc. are not intended for the Petitioner alone but for the Petitioner and his family members. At-least as of now, the Respondent-wife and the minor daughter are very much the family members of the

Petitioner. The salary head indicates that the Petitioner's total earnings are Rs.34,670/- per month. Therefore, even assuming that the Petitioner is required to spend some amount for maintenance of his mother, even then, the award of Rs.10,000/- per month by way of interim maintenance in favour of the Respondent-wife and minor daughter is neither unreasonable nor excessive.

12. For the aforesaid reasons, it is not possible to grant any relief to the Petitioner in this petition. The petition is, therefore, dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)