

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6110 OF 2015

Nilesh Tejram Deotale

...Petitioner

Versus

Mrs. Kanchan Nilesh Deotale And Anr.

...Respondents

WITH

CIVIL APPLICATION NO.1896 OF 2015

Mr.R.P. Thote i/b. Mr.Vivek R.Thote, for the Petitioner.

Mr.Suresh Dhole with Anuja Dhole-Trilolekar, for the Respondent no.1.

CORAM : G.S.KULKARNI, J.***DATE : 18th JANUARY, 2018***

P.C. :

1. Heard learned Counsel for the petitioner and learned Counsel for respondent no.1. Challenge in this petition is to the order dated 16 October 2014 passed by the learned Civil Judge, Senior Division, Panvel, whereby the application of the respondent no.1-wife under Section 24 of the Hindu Marriage Act, has been allowed in the following terms:-

“O R D E R

1. Applicant (Exh.7) is hereby partly allowed.
2. The Respondent (Ori.Petitioner) is hereby directed

to pay maintenance of Rs.15,000/- per month to the Applicant (Ori.Respondent), from the filing of this petition.

Panvel.

Date: 16/10/2014

sd/-

(G.P. SHRISAT)

Civil Judge, Sr.Dv.,Panvel”

2. The case of the respondent no.1 in her application before the trial Court was that the marriage between the petitioner and the respondent no.1 was solemnized on 16 April 2003. In the year 2006 a daughter was born. In regard to the birth of the daughter, the respondent no.1 has substantial grievance inasmuch as the petitioner led her to a forced pregnancy against medical advice and which had substantially deteriorated her health interalia on account of loss of bone marrow etc. Respondent No.1 thereafter continuously remained to be sick. In or about July,2011, the petitioner removed the respondent no.1 as also her daughter Sagarika from the matrimonial house and confined them to one small room in the said house which was subsequently separated by construction of wall. It was impossible for the respondent no.1 to maintain herself in the state of health she was, as also the livelihood and the survival of the child was also in grave danger. Thus willingly Respondent No.1 asked the petitioner to take care and maintain the minor daughter who was also required to stay in

a condition of misery alongwith her, failing which the child would have died. The respondent no.1 accordingly was forced to stay away from the matrimonial house. Respondent No.1 has stated that though she was qualified but due to poor state of health, it became impossible for her to get any employment. On the other hand, the petitioner-husband who possesses a qualification of a Masters degree in Engineering was well placed and was working as Assistant Professor in Lokmanya Tilak College of Engineering Navi Mumbai. He was drawing a monthly salary of Rs.60,000/- per month. Apart from that the petitioner was also undertaking private tuitions of engineering students and earning Rs.50,000/- per month. The petitioner was having commercial property at Ring Road, Nagpur and was receiving rental income of Rs.15,000/- per month. In addition to the said sources of income, the petitioner was also having 16 acres of agricultural land fully irrigated in his absolute share out of the ancestral property and the income from the said irrigated land was about Rs.20,000/- per month on an average and thus, the total income of the petitioner was about Rs.1,45,000/- per month. The petitioner was enjoying high standard of life. The respondent no.1 was having no source of livelihood. Accordingly in the application in question, the

respondent prayed that the petitioner be directed to pay monthly maintenance of Rs.35,000/- with arrears from 30 July 2011 that is the date on which she was separated from the matrimonial house and an amount of Rs.20,000/- be paid towards the cost of the proceedings.

3. The petitioner appeared and contested the said application of the respondent no.1 by filing his reply. A perusal of the reply clearly indicates that denial of the specific averments as made by the respondent no.1 in her maintenance application was vague. In fact in paragraph 7 of the reply the only contention worth reference, but hardly of any consequence is an averment that respondent no.1 is a gold medalist in M.Sc. and is qualified to support herself.

4. The learned trial Judge considering the rival pleas as also the evidence appearing on record, accepted the plea of the respondent no.1, that respondent no.1 was forcibly driven out by the petitioner from the matrimonial house and there was no dispute that she was staying separately in the premises which is a small room as claimed by the respondent no.1. It is a room

partitioned within the apartment of the petitioner. The learned trial Judge observed that it had come on record that the respondent no.1 was sick at the time when she was removed from the matrimonial house and due to want of blood in her body, her hemoglobin levels had drastically gone down, which was dangerous to her life. The petitioner did not provide any medical treatment. Respondent no.1 was required to be admitted in a hospital by the neighbours as also she was given blood to restore her hemoglobin level. These are the observations made by the learned trial Judge on the conduct and motives of the petitioner. As regards the source of income, the learned trial Judge in paragraph 14 has observed that the petitioner had admitted the salary which he was earning, however, his contention was that he was paying EMIs for the house at Rs.15,000/- per month, and remaining Rs.30,000/- he is using for personal expenses and to look after his aged parents. However, there was not an iota of evidence to support the said assertion. The learned trial Judge also took into consideration that the petitioner was receiving rent income from the house property as also he was receiving income from irrigated land and was thus receiving total income of Rs.1,45,000/-. It was observed that the respondent no.1 was

driven out from the matrimonial house by the petitioner and thus admittedly, the respondent no.1 was required to stay separately from the matrimonial house. It was also observed that the respondent no.1 had no source of livelihood and the amount which she has claimed, is only for herself to support her bare livelihood. For the said reasons, the respondent no.1's application came to be allowed by the learned trial Judge in the terms as noted above.

5. Learned Counsel for the petitioner in assailing the impugned order has submitted that the order needs to be set aside inasmuch as the amount of Rs.15,000/- per month as awarded, to be paid by the petitioner to respondent no.1, is unreasonable and excessive. It is submitted that the petitioner is looking after the minor child as also the respondent no.1 is residing in part of the house of the petitioner and therefore, her residential need is already taken care of, thus the amount which is awarded by the trial Court has become excessive and unreasonable. There is no other ground raised by the learned Counsel for the petitioner in assailing the impugned order.

6. On the other hand, learned Counsel for the respondent no.1-wife while supporting the order passed by the learned trial Judge would urge that in fact this is a fit case where the respondent should move an application to seek enhancement of the maintenance as awarded by the impugned order. Learned Counsel for the petitioner has drawn my attention to the reply affidavit dated 13 June 2016 filed by respondent no.1 in which in paragraph 4 respondent no.1 has set out the circumstances under which she was forced to undergo the pregnancy against medical advice for the second child Sagrika. Paragraphs 5 and 6 pertain to the state of health of the respondent no.1 as also the conduct of the petitioner as meted out to respondent no.1. In paragraph 7 respondent no.1 has pointed out that the petitioner had secured his transfer to Nagpur and was living with another woman named "Varsha" as husband and wife. The petitioner had not paid a single rupee to the respondent no.1 since the time the petitioner deserted her and when she was sick and ailing. It is submitted that all details of hospitalization of respondent no.1 were placed on record before the trial Court. It is pointed out from reply affidavit that the respondent no.1 was also required to pay monthly maintenance charges of the society, as petitioner was not paying the same,

respondent no.1 was always facing threats of disconnection of water, electricity, sanitation by the society and was continuously insulted by the society office bearers for non-payment of monthly maintenance. It is also pointed out that the petitioner had engaged private detectives to find out whether the respondent no.1 was working somewhere and she was tortured as per the instructions of the petitioner. It is also pointed out that many times the petitioner had come to respondent no.1's place, after midnight, in a drunken state with unknown persons and had threatened respondent no.1. It is also submitted that clearly the sources of income and the petitioner was earning nothing less than Rs.1,45,000/- per month.

7. Though the reply affidavit of respondent no.1 was placed on record on 13 June 2016, however till date no rejoinder affidavit is filed. It also needs to be noted that the contents of the reply affidavit are hardly in variation from the case of the respondent no.1 as urged before the trial Court. The condition in which the respondent no.1 was staying, her ill health and that respondent no.1 was never employed and was barely surviving, was always the case of respondent no.1 and was a matter of

record before the trial Court. Surprisingly the petitioner has taken the proceedings very lightly. Learned Counsel for the petitioner at the end of the arguments, on a query as raised by the Court as to whether any rejoinder affidavit has been filed, has taken out from his brief a rejoinder affidavit which does not bear any date but appears to be affirmed in April, 2017 from the stamp of the Notary dated 19 April 2017 and intends to tender it to be taken on record. I wonder whether it should at all be taken. No court would appreciate such carelessness of a litigant, when this petition is of the year 2015 and such belated attempt is being made to file such affidavit, however conscious of the interest of justice and for the sake of completeness of the record, rejoinder is taken on the file. A perusal of this rejoinder affidavit does not depict anything worth. The contents are vague denials. There is no whisper about the specific averments in regard to the income as also in regard to the ill health and the condition in which the respondent no.1 is surviving.

8. Having considered the submissions as made on behalf of the learned Counsel for the parties and after perusal of the impugned order, I am of the opinion that the impugned order does

not call for any interference. The learned Judge applying appropriate principles of law has awarded a reasonable amount of Rs.15,000/- per month to be paid by the petitioner to the respondent no.1. The learned Judge has taken into consideration the different sources of income of the petitioner. There is also nothing on record to show that the respondent no.1 was at any time in employment or having any source of income to support her livelihood. As regards the arguments on behalf of the petitioner that, as respondent no.1 has a M.Sc. Degree, she is not entitled for any maintenance as she has a potential to get an employment, also cannot be accepted. Merely respondent no.1 is having M.Sc. Degree is not sufficient to presume that the employment is guaranteed to her and more particularly, in the state of health of the respondent no.1 as observed by the learned trial Judge. Thus, the only argument that the amount which has been awarded is excessive or unreasonable, cannot be accepted. Except these submissions, learned Counsel for the petitioner could not point out any other perversity or illegality in the impugned order. Resultantly, the writ petition lacks merit.

9. This Court by its earlier order directed the petitioner

to deposit in this Court an amount of Rs.1,00,000/- and thereafter, Rs.3,50,000/-. Learned Counsel for the petitioner submits that the said orders are complied by the petitioner and the amounts are already deposited. Learned Counsel for the respondent no.1 would submit that already an application has been moved on behalf of the respondent no.1 for withdrawal of the said amount and that certain formalities to receive payment have remained.

10. Office is directed to take immediate steps to make payment of the amount as deposited by the petitioner alongwith the interest accrued, if any to respondent no.1. Office shall do the needful within three weeks from today.

11. As regards the balance amount, the learned Counsel for the petitioner makes statement that the same shall be deposited with the trial Court within two months from today. Statement is accepted. On deposit of the said amount, the respondent no.1 is permitted to withdraw the said amount. It is clarified that no further extension shall be granted for deposit of the balance amount.

12. The writ petition is accordingly dismissed however in the above terms.

13. As writ petition is disposed of, pending civil application does not survive. It is accordingly disposed of.

14. At this stage, the learned Counsel for the petitioner submits that the proceedings before the trial Court be expedited. It would be open to the parties to approach the trial Court with a request to expedite the hearing of the proceedings.

(G.S.KULKARNI, J.)