

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2950 OF 2018

Niranjan Arvind Pathak .. Petitioner
Versus
Mrs. Ashwini Niranjan Pathak .. Respondent

Mr. Shashikant Chandak referred by Legal Aid for respondent
Mr. K.P.Shah for petitioner

CORAM : M.S.SONAK, J.

DATE : 26th November 2018.

P.C.

Heard Mr. Shah for petitioner and Mr. Chandak for respondent. The challenge in this petition is to the order dated 18th December 2017 by which the learned family court has directed the petitioner to pay interim maintenance of Rs.10,000/- per month to the respondent.

2] Mr. Shah learned Counsel for the petitioner states that the parties have lived together as husband and wife for hardly fifteen days. Since thereafter, the respondent left the matrimonial home on the alleged ground that she has to take care of her ailing parents.

Mr. Shah submits that in such circumstances, the respondent is not entitled to claim any maintenance.

3] Without prejudice to the aforesaid, Mr. Shah submits that as per the income tax returns produced on record, the income of petitioner appears to be Rs.20,000/- per month. Besides, the petitioner has to take care of his aged parents. Mr. Shah points out that the two businesses to which the family court has made a reference, are very small business activities. He points out that one of the so called business activity is operating a circulating library. He submits that the petitioner has to himself spend money for this purpose and there is no significant income therefrom. He points out that even the second business of providing utensils and mattresses to marriage halls is small time business. Mr. Shah submits that taking into consideration all these facts award of Rs.10,000/- by way of interim maintenance is quite excessive, warrants interference.

4] Mr. Chandak, learned Counsel for the respondent submits that there is no infirmity in the impugned order. He pointed out that the income of the respondent is in excess of Rs.40,000/- per

month, out of which only Rs.10,000/- has been awarded as interim maintenance to the respondent wife. He pointed out that the father of the petitioner is a pensioner. He draws pension of Rs.25,000/- per month and this fact was suppressed by the petitioner.

5] Rival contentions are now for determination:-

On the basis of the material on record the learned Family court has recorded initially that the income of the petitioner is in the range of Rs.40,000/- per month. For this purpose, the learned family court has not only relied upon the income tax returns but also the fact that the petitioner is operating two businesses. The family court has also relied upon the advertisement inserted by the petitioner himself in the matrimonial column in which the petitioner had held out that his his monthly income is Rs.40,000/-. This material was sufficient to conclude that the petitioner's income is in the range of Rs.40,000/- per month.

6] The impugned order awards Rs.10,000/- per month by way of interim maintenance. Therefore, even assuming that the

petitioner has to take care of his aged parents, an amount of Rs.30,000/- is still available to the petitioner to take care of himself and his aged parents.

7] Since at the stage of deciding interim maintenance these are relevant parameters, there is really no case made out to interfere with the impugned order.

8] Accordingly, this petition is dismissed. There shall be no order as to costs. Interim order stands vacated.

9] It is however, made clear that the observations made in the impugned order or for that matter in the present order are prima facie in nature and the learned family court need not be influenced by such observations at the time of deciding main application finally. Considering the age of the parties, the learned family court to consider whether some priority can be granted to the main matter.

(M.S.SONAK, J.)