

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.2563 OF 2016

Shri. Kanchan Ravindra Kharat	...Petitioner
V/s.	
Smt.Pallavi Kanchan Kharat	...Respondent

Mr.Shivanand B. Marbe i/b. Mr.Sushil Nimbkar for Petitioner.
None for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 24th JANUARY, 2018

P.C.:

The challenge as raised in this petition is to the order dated 8th December 2015 passed by the learned Judge, Family Court at Pune on an application as filed by the respondent-wife below Exhibit 38 thereby application of the respondent-wife came to be granted in the following terms:

- “1. *This application is granted.*
2. *The respondent-husband is directed to pay EMI of the house loan without fail.*
3. *This order is dictated and pronounced in open Court.”*

2. It is not in dispute that the respondent-wife had earlier moved an application (Exhibit 13) for claiming interim maintenance which came to be rejected by the learned Judge of the Family Court by an order dated 12th August 2015 inter-alia observing that the respondent-wife was working with the ICICI Bank and from the salary slips, it was clear that she was getting net salary of Rs.33,000/- per month after deduction. It was noted that the petitioner-husband was working with

Synechron Technologies Pvt. Ltd., Pune and his salary slips for the months of April, May and June, 2015 showed that his gross salary was of Rs.1,34,184/- and the net salary was around Rs.1,05,130/- per month after deduction. Considering that the respondent-wife was already employed and was getting salary of Rs.33,000/- per month, it was held that she was not entitled for interim maintenance of Rs.1 Lakh per month as prayed by her. However, in regard to the contention as urged on behalf of the respondent-wife that the petitioner and the respondent had jointly purchased the house by obtaining a joint loan and the EMI of the housing loan was Rs.44,000/- per month and that the petitioner-husband had stopped the payment of EMI and the salary of the respondent-wife of Rs.33,000/- was not sufficient for the payment of EMI, the learned Judge while dismissing the respondent's said application, granted liberty to the respondent-wife to file a separate application seeking a direction to the petitioner-husband to pay EMI in proportionate of his income or as per law.

3. The order dated 12th August 2015 passed by the learned Judge of the Family Court was accepted by the petitioner-husband and even in regard to the liberty which was granted, there was no challenge. The respondent-wife invoking the said liberty granted to her, moved the application in question (below Exhibit 38) seeking a relief that the petitioner-husband be directed to make payment of the EMIs as it was not possible for the respondent-wife to make payment of the EMIs from the meager amount salary of Rs.33,000/- received by her.

4. By the impugned order, the learned Judge of the Family Court taking into consideration the legal obligation of the petitioner-husband and considering the fact that the respondent-wife is residing in the flat in question, in regard to which the loan was obtained jointly by the

petitioner and the respondent, has passed the impugned order directing the petitioner-husband to make payment of the EMIs of the housing loan.

5. The only submission as made by the learned Counsel for the petitioner-husband in assailing the impugned order submits that it was not permissible for the learned Judge of the Family Court to pass the impugned order in as much as neither Section 94(3) of the Code of Civil Procedure (for short 'the Code') nor Section 151 of the Code of Civil Procedure authorises the Court to pass an order of the nature as impugned. Learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in case of **M/s.Ram Chand and Sons Sugar Mills Pvt. Ltd. vs. Kanhaya Lal Bhargava & Ors.**¹

6. In my opinion, the learned Judge of the Family Court considering all the circumstances has thought it appropriate to exercise the powers vested with him under Section 151 of the C.P.C. read with Section 94(3) of the Code of Civil Procedure. What is pertinent to note is that the impugned order correctly appreciates the intention on behalf of the petitioner-husband to stop making payment of the EMIs which was nothing but to cause harassment to the respondent-wife with a view to dispossess her in any eviction action that could be resorted by the bank in case of default in making payment of EMIs. Also in pursuance of the impugned order, the petitioner-husband has started making payment of EMIs. The contention that Section 94(3) of the Code read with Section 151 of the Code would not confer a power on the Court to pass an order directing payment of EMI by the petitioner also cannot be accepted. Section 94(3) of the Code confers powers on the Court to pass such orders to prevent the ends of justice being defeated, and pass such interlocutory orders as may appear to the Court to be just and

¹ AIR (SC) 1966 1899

convenient. Further the inherent powers of the Civil Court are complementary to the powers specifically conferred and the Court can utilise the same for the purposes as recognised by Section 151 of the Code.

7. Learned Counsel for the petitioner however is not in a position to demonstrate that in passing the impugned order, the Family Court has exercised such power inconsistent with or in conflict with any other powers expressly or by necessary implication conferred by other provisions of the Code. This argument of the petitioner also overlooks that even assuming that such limitation is imposed on the powers of the Court, nonetheless such limitation would not control the undoubted powers of the Court conferred under Section 151 of the Code to make such appropriate orders to meet the ends of justice or prevent abuse of the process of the Court. In any event when the petitioner has advanced this argument, the petitioner has overlooked that Section 7 of the Family Courts Act 1984 in sub section (1)(c) also confers a jurisdiction on the Family Court to entertain proceedings between the parties to a marriage with respect to the property of the parties or of either of them. The position in law being clear which is also recognized in the decision of the Supreme Court in **M/s.Ram Chand and Sons Sugar Mills Pvt. Ltd.** (supra), in my opinion, the petitioner cannot sustain an argument that the Family Court has no jurisdiction to pass the impugned order.

8. It is required to be noted that the case as urged on behalf of the petitioner-husband before the Family Court was not accepted considering the fact that both parties were joint owners of the flat in question as also the petitioner-husband was making payment of the EMIs. It was observed that the petitioner-husband had stopped making payment of EMI, to dispossess the respondent-wife on a eviction action the bank would initiate. The learned Judge of the Family Court has

observed that intention on the part of the petitioner-husband in not making the payment of EMIs was not honest. It is also observed that the salary of the respondent-wife was not sufficient for her to meet the EMIs as also to take care of her livelihood, however, on the other hand, income of the petitioner-husband was sufficient which was more than three times the income of the respondent-wife. It is also observed that the sole intention of the petitioner-husband was to cause a harassment to the respondent-wife by causing her a financial strain and burden. Thus, considering the facts, the learned Judge allowed the application of the respondent-wife directing the petitioner-husband to make payment of EMIs of the house loan. It is not in dispute that the respondent-wife was staying in the flat in question which was jointly purchased with the petitioner. The respondent-wife had not made any prayer in her first application for separate residence or rent to be provided to her. Only on the consideration that the respondent-wife was employed, her first application for maintenance came to be dismissed, holding that her salary income was sufficient for her livelihood. It is not in dispute that the salary of the petitioner-husband was three times more than the salary of the respondent-wife and that the flat being in the joint name of the petitioner and the respondent, the petitioner would be having 50% right and interest in the house property.

9. Thus, considering the overall facts and circumstances of the case, I find no merit in this petition, so as to interfere in the impugned order. It is, accordingly, rejected. No costs.

[G.S. KULKARNI, J.]