

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2691 OF 2018

Mr. Swarnendu G. Ghosh .. Petitioner
vs.
Mrs. Revati S. Ghosh .. Respondent

Mr. T.D. Deshmukh a/w. Mr. Sagar Kursija for the Petitioner.
Mr. H. P. Vyas for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 NOVEMBER 2018.

ORAL JUDGEMNT :-

1] Heard Mr. T.D. Deshmukh for the Petitioner and Mr. H.P. Vyas for the respondent.

2] The challenge in this petition is to the order dated 8th November 2016 below Exhibit-17 made by the learned Family Court at Pune. The operative portion of which reads as follows:

“ORDER

1. The application is granted partly as under:

2. The petitioner-husband shall pay @ Rs.40,000/- (Rs. Forty thousand) per month to the respondent-wife and @ Rs.15,000/- (Rs. Fifteen thousand) per month to her son Spandan as in interim maintenance from the date of filing of the application i.e. 20-08-2015 till the final decision of main petition.

3. The petitioner shall pay all educational expenses, tuition fees, travelling charges etc. of the son Spandan.

4. The petitioner shall clear arrears of maintenance within four months from today.

5. The petitioner is directed to deposit maintenance amount in the account of the respondent-wife on or before 10th date of each English month.

6. *The respondent-wife is directed to give details of her bank account to the petitioner.*
7. *The petitioner shall pay Rs.10,000/- as costs of this application to the respondent.*
8. *This order is dictated and pronounced in the open Court.”*

3] Mr. Deshmukh, the learned counsel for the petitioner – husband, at the outset points out that at the time when the impugned order was made, the petitioner may have been earning salary of over Rs.4 Lakhs per month. However, recently, the petitioner has left his job in order to commence a start up company, in which, there is no substantial income for the present.

4] Mr. Deshmukh submits that the petitioner along with reply to application for interim maintenance had submitted a list of expenses undertaken by him each month, *inter alia* on account of the respondent – wife and the two children. He submits that such expenses come to approximately Rs.3.12 lakhs per month. He submits that this material has not at all been taken into consideration by the learned Family Court while passing the impugned order.

5] Mr. Deshmukh further submits that the material on record bears out that practically all the expenses in relation to the

respondent -wife and the two children, one of whom stays with the petitioner or is placed in the Boarding School by the petitioner, are borne by the petitioner. Mr. Deshmukh submits that in such circumstances the learned Family Court has grossly erred in awarding maintenance of Rs.40,000/- per month to the respondent -wife and Rs.15,000/- to the son Spandan. Mr. Deshmukh points out that such amount of interim maintenance has been ordered over and above the direction to bear all educational expenses, tuition fees, travelling charges in relation to Spandan. Mr. Deshmukh submits that such award is grossly excessive.

6] Mr. Deshmukh points out that the Magistrate under the provisions of Domestic Violence Act has already awarded maintenance of Rs.25000/- per month to the wife and son. Mr. Deshmukh submits that even this aspect has not been properly considered by the learned Family Court. Mr. Deshmukh submits that the wife and son have nowhere pleaded regards their needs and consequently, the award of interim maintenance to the extent awarded is grossly excessive and warrants interference. For all these reasons, Mr. Deshmukh submits that the impugned order warrants interference.

7] Mr. Vyas, the learned counsel for the respondent, supports the impugned order on the basis of reasoning reflected therein. He submits that the impugned order has taken into account all the relevant considerations. He submits that taking into account the income of the petitioner which is almost Rs.4.5 lakhs per month, award of interim maintenance of hardly Rs.65,000/- in favour of the respondent – wife and the minor son is in fact on the lower side. For all these reasons, Mr. Vyas submits that this petition warrants dismissal.

8] The rival contentions now fall for my determination.

9] At the outset, it is necessary to note that the impugned order only determines the interim maintenance. At this stage, any detailed investigation is neither feasible nor is it contemplated.

10] There is nothing on record to indicate that the respondent has any income or in any case any substantial income from which she is in a position to maintain herself. On the contrary, there was unimpeachable material before the Family Court to establish that the petitioner was earning an income of over Rs.4 lakhs per month.

11] The list of expenses appended by the petitioner to his reply makes reference to expenditure of about Rs.3.12 lakhs per month. However, this includes expenses not just allegedly incurred towards the maintenance of wife and children, but also the personal expenses incurred by the petitioner and the expenses incurred by the petitioner in respect of his parents. In any case, the list produced before the Family Court was not seriously backed by any material to substantiate or back the same.

12] The learned Family Court has correctly appreciated the parameters necessary for consideration of an application for interim maintenance. The learned Family Court has not ignored the fact that the Magistrate in the proceedings under the Domestic Violence Act has awarded maintenance of Rs.25000/- to the wife and the minor son. However, even if such maintenance amount is taken into consideration, the total maintenance amount which the petitioner is required to pay to the respondent and his minor son is Rs.65,000/- per month as against his income of over Rs.4 lakhs per month.

13] It is true that the petitioner has been directed to also bear all educational expenses etc. in relation to Spandan. Further, taking

into consideration the age of Spandan and his needs and requirements, there is nothing excessive about the directions to pay maintenance of Rs.15,000/- to Spandan in addition to the educational expenses, tuition fees and travelling charges etc.

14] Upon evaluation of the material on record, it is not possible to hold that the award of interim maintenance in the facts and circumstances of the present case is excessive or that the award is vitiated by failure to take into consideration the relevant materials or by application of relevant principles.

15] The contention that the petitioner has quit his job to commence a start up business is not substantiated by any material on record. In any case, such a subsequent development is strictly speaking not relevant for examining the legality and validity of the impugned order which was made on 8th November 2016 and at which time, undoubtedly, the petitioner was in receipt of salary of over Rs.4 lakhs per month.

16] For all the aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is therefore, liable

to be dismissed and is hereby dismissed. There shall be no order as to costs.

17] Further it is clarified that the observations in the impugned order or for that matter the observations in the present matter the are only *prima facie* for the purposes of deciding the issue of interim maintenance. Therefore, the learned Family Court need not be influenced by any such observations at the stage of deciding the issue of final maintenance. All contentions of all parties are therefore, kept open.

(M. S. SONAK, J.)