

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3685 OF 2016

Vyankatesh Pandharinath Bodkhe,]
Age : 44 years, Occ. Business,]
R/of C/of Smt. Manjari Lele,]
Flat No.6, Pune Salokha Society,]
Building No.1, Near BSNL Office,]
Near Pancharam Hotel,]
Shahu College Road, Parvan, Pune.] Petitioner

Versus

1. Pragati Vyankatesh Bodkhe,]
Age : 35 years, Occ. Household,]
2. Ms. Kshipra Vyankatesh Bodkhe,]
Age : 10 years, Occ. Education,]
(Minor, through her guardian -]
Respondent No.1)]
Both residing at C/of Vijay Chavan,]
Near Srujan Apartment,]
Gurukrupa Bungalow, M.I.D.C.,]
Tal. Baramati, Dist. Pune.] Respondents

Mr. Pratap M. Nimbalkar, i/by Mr. Shyam Prasad Ramshankhra, for the
Petitioner.

Mr. Rahul S. Kate for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Nimbalkar, learned counsel for the Petitioner, and Mr. Kate, learned counsel for the Respondents.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the orders dated 10th February 2016 passed by District Judge-1, Baramati, below “Exhibit-5” and “Exhibit-15” in Civil Appeal No.14 of 2014, thereby rejecting the Petitioner's application for stay to the execution of the impugned Judgment and Order dated 26th September 2013 passed by the Civil Judge, Senior Division, Baramati, in Regular Civil Suit No.141 of 2012, thereby directing the Petitioner to pay to the Respondents, who are his wife and daughter, maintenance at the rate of Rs.10,000/- per month, each, from the date of filing of the suit. The said Judgment and Decree has been passed under Section 18 of the Hindu Adoptions and Maintenance Act, 1956.

3. The submission advanced by learned counsel for the Petitioner is that, even in the proceedings, bearing Criminal Miscellaneous Application No.167 of 2013, instituted by Respondent No.1, under the provisions of the Protection of Women from Domestic Violence Act, 2005, by the order dated 14th March 2013, the Petitioner has been directed to pay the maintenance @ Rs.4,000/- per month to Respondent Nos.1 and 2 and in such situation, he is finding it difficult to pay the

amount of maintenance, as awarded in this proceeding. Therefore, he has requested the Appellate Court to exercise its powers under Order 41 Rule 5 of C.P.C. for staying the execution of the Judgment and Decree passed by the Trial Court.

4. The Appellate Court, however, rejected the said application by holding that, the Petitioner is liable to pay the amount of maintenance, as awarded in both the proceedings.

5. While challenging this order of the Appellate Court, the submission of learned counsel for the Petitioner is that, the Petitioner is paying the amount of maintenance regularly. So far, he has paid the amount of Rs.12,10,000/- in execution of the order passed in the Civil Suit; whereas, the total amount of maintenance he has paid so far is Rs.18,60,000/-. Thus, it is submitted that, the Petitioner has the bonafide intention of complying with the order, but he is unable to pay the remaining amount of Rs.3,00,000/- in this proceedings, as calculated by learned counsel for the Respondents.

6. Learned counsel for the Respondents submits that, as the order is of the maintenance and Respondents are totally depending upon the amount awarded in these proceedings for their day-to-day livelihood, the said order cannot be stayed.

7. Considering the fact that the order passed by the Trial Court in the

Civil Suit and the order passed in the Domestic Violence proceedings are pertaining to maintenance and they are passed after taking into consideration the income, potential and capacity of the Petitioner to pay the said amount, the order of maintenance cannot be stayed as such. Hence, no fault can be found in the impugned order passed by the Appellate Court rejecting the Petitioner's application for stay to the execution of the Judgment and Order passed in Civil Appeal No.14 of 2014.

8. The Writ Petition, therefore, being without merits, stands dismissed.

9. At this stage, learned counsel for the Petitioner points out that, the impugned order passed by the Appellate Court is, however, on totally different aspect, as to how the adjustment of the amount of maintenance made by the Trial Court in the Civil Suit proceedings is correct. Needless to state that, as the applications at Exhibit-5 and Exhibit-15 filed by the Petitioner do not raise any grievance or contention to that effect, those observations were unwarranted and hence, they will not have any effect on the subsequent proceedings.

10. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]