

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10110 OF 2017

Aniruddha Arun Garje ... Petitioner
Vs.
Sheetal Garje ... Respondent

Mr. Subhash Jha a/w. Ms Sanjana Pardeshi i/b. Law Global for Petitioner.
Mr. Vivek Salunke for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 1, 2018

ORDER :

Heard Mr. Subhash Jha, learned Counsel for the petitioner and
Mr. Vivek Salunkhe, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and orders dated - (i) 18.08.2016 below exhibit-23, (ii) 27.09.2016 below exhibit-33, (iii) 10.11.2016 below exhibit-16 in P.A.No.1029 of 2015 passed by the learned Judge, Family Court No.1, Pune. By order dated 18.08.2016, the learned trial Judge rejected the application made by the petitioner at exhibit-23. Petitioner filed application for production of documents calling upon the respondent-wife to submit her income tax returns, PAN Card and education certificate, Form 16 since beginning till date, Salary Account Statement of the respondent wife in all banks of her all previous salaries. The learned trial Judge rejected the application by observing that respondent has produced the copy of the PAN card and mark list. In respect of IT Returns and Form 16, she filed affidavit to the effect that since last two years she is not doing any job and therefore did not file the same.

3. By order dated 27.09.2016 below exhibit-33, the learned trial

Judge rejected the application made by the petitioner for issue of witness summons to the concerned officer for production of documents mentioned in paragraphs 4(a), (b) and 5. By order dated 10.11.2016 below exhibit-16, the learned trial Judge partly allowed the application made by the respondent and directed the petitioner herein to pay interim maintenance of Rs.20,000/- per month to the respondent from the date of filing of the application till the decision of the petition. The petitioner is further directed to pay E.M.Is of the flat in which the respondent is presently staying till the decision of the Petition.

4. Mr. Jha strenuously contended that the total net income of the petitioner is Rs. 74,216/-. He gave break-up of expenses as under:

Particulars	Amt. (Rs.)
A. Total Net Income	74,216/-
B. Expenses (deductions)	
(i) EMI towards housing loan	18,200/-
(ii) EMI towards car loan	13,520/-
(iii) LIC premium	13,008/-
(iv) Medical expenses towards parents and grandmother	15,000/-
Total Expenses	59,728/-
Net amount after deductions (A - B)	14,488/-

5. He submitted that net amount after deductions comes to Rs.14,488/- per month. He submitted that under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act'), maintenance *pendente lite* and expenses of proceedings can be awarded. Section 24 provides that where in any proceeding under the Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding,

and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable. Section 25 provides for permanent alimony and maintenance. It lays down that any Court exercising jurisdiction under the Act, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

6. He submitted that Legislature has treated husband and wife on equal footing. Under Sections 24 and 25 of the Act, even husband can apply for maintenance *pendente lite* and expenses of the proceedings and permanent alimony and maintenance respectively. If that be so, while considering the application of the wife, same yardstick, which is applicable while considering the case of the husband, has to be applied. He submitted that the Court has to consider in the present case, whether respondent wife has no independent income, sufficient for her support and necessary expenses of the proceedings. He submitted that admittedly, respondent is M.Com. and was working as a Sales Manager with various construction firms like Calyx Properties, Empire Estate and lastly with Vadhvani Construction, Pimpale Saudagar. She was getting minimum salary of Rs.30,000/- per month.

7. Mr. Jha submitted that on 21.04.2016, respondent filed

application under Section 24 of the Act praying for an amount of interim maintenance of Rs.50,000/- from November 2015 till the disposal of the Petition. In the application, respondent suppressed about her employment and falsely contended that she is a housewife and not employed anywhere and has no source of income. He submitted that respondent has also filed false case under Sections 498-A, 323, 504 and 506 Indian Penal Code, 1860, which is registered as F.I.R.No.957 of 2016, implicating not only the petitioner but his parents, brother and brother's wife. The Investigating Officer has filed charge-sheet only under Section 498-A and not any other Sections.

8. Mr. Jha submitted that petitioner filed reply opposing that application inter alia contending that respondent has been working as a Sales Executive for the last five years with well known companies like Empire Estate, Pimpri, Calyx Properties, Pirangut, Tata Mutual Fund office at Dnyaneshwar Paduka Chowk, Pune and has a stable monthly income. Respondent is earning huge amount, which is evident from the fact that she has purchased out of her own income Maruti Swift bearing registration No.MH14 – 7425, which costs nearly about 7 Lakhs. He submitted that respondent vide exhibit-30 produced documents on 31.08.2016 which included insurance policy of the said car. It reveals that while submitting the information to the insurance company on 15.09.2015, respondent stated her occupation as service / salaried. The insurance policy was valid for the period from 15.09.2015 to 14.09.2016. He submitted that the learned trial Judge committed serious error in passing the impugned orders as also the learned trial Judge erred in dismissing the application made by the petitioner for issuance of witness summons, more so when the respondent was not revealing her financial status for deciding the application for interim maintenance. By rejecting applications exhibits-23 and 33, the learned trial Judge denied

the opportunity to the petitioner to bring the truth of financial status of the respondent before the Court.

9. Mr. Jha submitted that Section 24 of the Act fell for consideration before the learned Single of Madhya Pradesh High Court (Indore Bench) in ***Mamta Jaiswal Vs. Rajesh Jaiswal*, 2003 (3) MPLJ 100**. In paragraph 6, it was observed thus,

“6. In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient, cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible.

The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardizing their hard earned income by toiling working hours.”

10. The decision in **Mamta Jaiswal** (*supra*) was referred in paragraph 8 of **Sanjay Bharadwaj Vs. The State, MANU/DE/2129/2010** passed by the learned Single Judge of Delhi High Court. He relied upon the decision of Karnataka High Court in **Dr. E. Shanthi Vs. Dr. H. K. Vasudev, AIR 2005 Karnataka 417**, and in particular paragraph 3 where the learned Single Judge observed that when the petitioner is capable of earning and having required qualification and that when she was working as a doctor prior to marriage, there cannot be any difficulty for her to continue the same profession. Therefore, Section 24 of the Act cannot come to the aid of such persons. He also relied upon order dated 18.07.2017 passed by the Division Bench of this Court (Coram : R. M. Savant Vs. Smt Sadhana S. Jadhav, JJ) in **Family Court Appeal (St.) No.17073 of 2017** with Civil Application No.157 of 2017 (**Gurpreet Kaur Alagh Vs. Gurpreet Singh Alagh**). In short, he submitted that respondent cannot sit idle as she is qualified and was gainfully employed earlier. It is only

after service of summons of the present Petition, respondent claims to be unemployed. For all these reasons, he submitted that the impugned orders deserve to be set aside.

11. On the other hand, Mr. Salunke supported the impugned orders. He relied upon the decision of the Apex Court in ***Manish Jain Vs. Akanksha Jain***, AIR 2017 SC 1640, and in particular paragraph 15 thereof where the Apex Court observed “It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife’s parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court”. He also relied upon the decision of this Court (Coram: Dr. Shalini Phansalkar-Joshi, J.) in ***Rippal Harbanslal Sunjeja Vs. Vibhuti Rippal Suneja***, Writ Petition No.2916 of 2017 dated 11.10.2017. In this decision, the learned Single Judge referred to the decisions in ***Sanjay Bharadwaj*** (*supra*), ***Damanreet Kaur Vs. Indermeet Juneja***, Criminal Revision Petition No.344 of 2011 decided on 01.06.2012 and ***Mamta Jaiswal*** (*supra*). While dealing with the decision in Mamta Jaiswal's case, the learned Single Judge observed that “it may be true that some observations are made by the High Court in the said judgment about the grant of interim maintenance to a qualified woman by observing that a lady who is fighting matrimonial petition for divorce cannot be permitted to sit idle and put her burden on the husband for demanding *pendente lite* alimony from him during pendency of such matrimonial petition. However, ultimately the order of interim maintenance awarded to her by the trial

Court was not disturbed in the decision and the husband was directed to pay the said amount. He, therefore, submitted that no case is made out for interfering with the impugned order.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Jha has mainly confined his arguments challenging the impugned order dated 10.11.2016, below exhibit-16, by which the learned trial Judge directed the petitioner to pay maintenance at the rate of Rs.20,000/- per month from the date of filing of the application till the disposal of the petition. A perusal of the impugned order, and in particular paragraph 7 thereof, shows that the learned trial Judge observed that the respondent denied the ownership of Swift car. Respondent specifically denied that at present she is serving . She filed affidavit in support of her contention that presently she is not serving anywhere. The respondent is well aware of the consequences of filing false affidavit. So at this stage, one has to rely upon the affidavit of the respondent and in the absence of any other evidence, one can presume that presently respondent is not serving anywhere. The learned trial Judge also considered the salary account of the respondent in Axis Bank and observed that previously, she might be serving in various institutes but at present there is no evidence on record to show that presently respondent is serving anywhere. The learned trial Judge also considered the decision in **Mamta Jaiswal** (*supra*) of Delhi High Court and **Ankur Mahindro Vs. Anirudh K. Mudgal** of Delhi High Court in **MAT App. (F.C.) No.143 of 2014**. The learned trial Judge noted that in Form 16 for the period from 01.04.2015 to 31.03.2016, gross salary of the petitioner is shown as 11,43,578/- for the year 2016-17. In paragraph 9, the learned trial Judge observed that the petitioner is earning gross salary approximately of Rs.11 lakhs and the respondent, being his wife, is entitled to live as per the standard of living and income of her

husband. Taking into account the income and standard of living of the husband, the learned trial Judge opined that the respondent is entitled to interim maintenance of Rs.20,000/- per month and that petitioner should pay E.M.Is for housing loan of the flat.

13. Mr. Jha relied upon the decision in **Mamta Jaiswal** (*supra*). In that case, the impugned order shows that Mamta Jaiswal was earning Rs.4,000/- as salary when she was in service in the year 1994. The husband Rajesh Jaiswal was getting salary of Rs.5,852/-. The matrimonial Court awarded alimony of Rs.800/- per month to Mamta Jaiswal as pendente lite alimony Rs.400/- per month was awarded to their daughter Diksha Jaiswal. Expenses necessary for litigation were awarded to the tune of Rs.1500/-. Paragraph 6 of that decision is already extracted earlier. In paragraph 8, it was observed thus,

“8. In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. The spouses who are quarreling and coming to the Court in respect of matrimonial disputes, have to be guided for the purpose of amicable settlement as early as possible and, therefore, grant of luxurious, excessive facilities by way of pendente lite alimony and extra expenditure has to be discouraged. ...”

14. In paragraph 9, it was observed that respondent husband did not challenge the order. Therefore, no variation or modification in it was necessary. Thus, the learned Single Judge of Madhya Pradesh High Court confirmed the order of the matrimonial Court awarding Rs.8,00/- per month to the wife. If one is permitted to say so, with utmost respect, the findings recorded by the learned Single Judge therein were not really called for.

15. In the case of **Dr. E. Shanthi** (*supra*), both, petitioner and

respondent were Doctors by qualification. In the proceeding filed by the respondent husband, the petitioner filed application under Section 24 of the Act claiming an interim maintenance of Rs.5,000/- per month and litigation expenses of Rs.50,000/-. The trial Court dismissed the application on the ground that petitioner-wife was attending as a Doctor in a clinic. In paragraph 3, it was observed thus,

“3. Admittedly, petitioner is residing with her parents at Chennai and whose brother is also a doctor. When the petitioner was practicing prior to marriage, when her name continuous on the board of the clinic, the Trial Court is justified in rejecting the application of the petitioner. There is no difficulty for the petitioner to work as a Doctor. Even if the petitioner is not working as a doctor in the clinic of her brother, since there are no impediments for her to work along with her brother as a doctor and when she is capable of earning, this Court is of the opinion that the Trial Court is justified in rejecting the application of the petitioner. When the petitioner is capable of earning and having required qualification and that when she was working as a doctor prior to marriage, there cannot be any difficulty for her to continue the same profession. Therefore, Section 24 of the Hindu Marriage Act cannot come to the aid of such persons. Accordingly, this petition has to be rejected.”

16. In my opinion, the said decision does not advance the case of the petitioner as basically, the petitioner wife was a professional and was attending as a Doctor in a clinic. The learned Single Judge observed that there was no difficulty for the petitioner to work as a Doctor. Even if the petitioner was not working as a Doctor in a clinic of her brother, there are no impediments for her to work along with her brother as a Doctor.

17. In the case of **Sanjay Bharadwaj** (*supra*), the petitioner husband was a non-resident Indian, working in Luanda, Angola in Africa as a Manager. He was B.Sc. and Masters in Marketing Management from Pondicherry University. Respondent No.2 wife was M.A. (English) and MBA. As per her bio-data sent before marriage, she was doing job with

a Multinational Company. The parties lived together for a period of 10 days i.e. from 15.05.2007 to 19.05.2007 and from 02.06.2007 to 06.06.2007. Petitioner filed Petition under Section 12 of the Act for declaring the marriage as null and void on the ground that wife was suffering from a chronic disease about which no information was given to him before marriage and a fraud was played. The respondent-wife filed FIR against the husband under Section 498-A and 406 Indian Penal Code, 1860 and filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In that case, petitioner was enlarged on bail subject to condition of handing over passport and that he will not leave the country. The learned Single Judge of Delhi High Court observed that in these circumstances, fixing of maintenance by the Court without there being even a prima facie proof of the husband being employed in India and with clear proof of the fact that the passport of the husband was seized, he was not permitted to leave country, (the bail was given with a condition that he shall keep visiting Investigating Officer as and when called) is contrary to law and not warranted under provisions of Domestic Violence Act. In my opinion, the said decision is also not applicable in the present case.

18. In the case of **Damanreet Kaur** (*supra*), petitioner wife challenged order dated 01.06.2011 passed by the learned Additional Session Judge, Delhi. She had filed the complaint under Section 12 of the Domestic Violence Act along with application for monetary relief under Section 23 of that Act. By order dated 18.11.2010, the learned Magistrate rejected the application. Aggrieved by that decision, she preferred appeal before the learned Additional Sessions Judge, who partly allowed the appeal and directed the respondent to pay a sum of Rs.10,000/- per month from the date of filing of the Petition towards contribution of the respondent to maintain the child born out of the wedlock of the parties. In other words, both the Courts had turned down

the prayer of the petitioner wife for granting of maintenance. The learned Additional Sessions Judge observed that the question whether petitioner wife was forced to resign or had resigned herself is a question to be considered during trial and also the question whether the reasons given by her for resigning from her job were satisfactory or not. The learned Single Judge, therefore, did not find any jurisdictional error or error in law in the impugned order. In my opinion, the said decision is also not applicable to the facts of the present case.

19. In view of the decision of the Apex court in **Manish Jain** (*supra*), and in particular paragraph 15 thereof, as also decision of this Court in **Rippal Harbanslal Suneja** (*supra*) and having regard to the findings recorded by the learned trial Judge, I do not find that any case is made out for interfering with the impugned order. The impugned order is passed on the basis of the pleadings of the parties and parties are yet to adduce evidence. If after full-fledged trial, Family Court finds that the respondent was gainfully employed, it will pass appropriate order as regards payment of *pendente lite* maintenance while disposing of the petition finally. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)