

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3980 OF 2018

Jairaj Shashikant Mistry ... Petitioner
Vs.
Jigisha Jairaj Mistry ... Respondent

Mr. Vivek Kantawala a/w. Mr. Amey Patil i/b. Vivek Kantawala & Co. for
Petitioner.

Mr. Rohaan Cama i/b. Shashwat Ravi i/b. Keystone Partners for
Respondent.

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

P.C. :

Heard Mr. Kantawala, learned Counsel for the petitioner and
Mr.Cama, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 28.02.2018 passed by the learned Judge, Family Court No.2, Mumbai below exhibits 6 and 12 in Interim Application No.72 of 2015. By that order, the learned trial Judge disposed of the applications 6 and 12 by directing the petitioner herein to pay an amount of Rs.40,000/- per month to the respondent herein and Rs.30,000/- per month for the minor daughter, in all, Rs.70,000/- per month towards the interim maintenance from the date of application i.e. 04.03.2015 till decision of the Petition. The learned trial Judge also made it clear that the amount of Rs.70,000/- shall include Rs.20,000/- per month awarded on 06.05.2014 to the minor daughter in Petition No.A-1145 of 2013. The learned trial Judge also made it clear that amount of Rs.70,000/- per month shall be in addition to the educational and medical expenses of the daughter incurred by the respondent herein subject to her showing receipts and bills and asking for reimbursement. The petitioner is further directed to pay Rs.15,000/- in lumpsum to the respondent towards litigation expenses.

3. In support of this Petition, Mr. Kantawala submitted that petitioner has instituted Petition No.A-642 of 2012 on 25.05.2012 for divorce. The said Petition was initially instituted in Family Court, Pune, which was transferred to the Family Court at Bandra and numbered as Petition No.A-1145 of 2013. The respondent filed application exhibit-30 on 01.01.2014 under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act'). On 06.05.2014, by consent of the parties, petitioner agreed to pay Rs.20,000/- per month towards maintenance of daughter with effect from 01.01.2014.

4. On 04.03.2015, respondent filed Petition No.C-30 of 2015 under Sections 18(1), (2)(b) and 20(1) of the Hindu Adoptions & Maintenance Act, 1956 (for short 'Adoption Act') read with Sections 19(f), 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). In that application, she claimed various amounts from the petitioner herein. On the same day, she filed interim application for maintenance in that proceedings. During the pendency of this interim application, respondent filed application on 20.10.2015 again under Sections 18(1), (2)(b) and 20(1) of the Adoption Act r/w. Sections 19(f), 20 and 22 of the D.V. Act. claiming Rs.1,00,000/- as interim maintenance to her. He invited my attention to-

- a. Paragraph 3(o) of Petition No.C-30 of 2015;
- b. Paragraph 12 where respondent contended that she is working in joint business of her father's office M/s. Bharat Thacker. At the time of her marriage, her salary was Rs.10,000/- per month and presently her salary is Rs.15,000/- per month. She is full time working in her father's firm and part time doing her brokerage. Respondent is earning Rs.57,000/- per month approximately.
- c. Interim application filed in Petition No.C-30 of 2015 and in particular, paragraph 22, where apart from contending that she is earning Rs.57,000/- per month, she contended that she is holding few shares

amounting to Rs.2,94,893/- and has PPF Account.

d. Income Tax Return for the assessment year 2013-14 of the respondent where her gross total income is shown as Rs.7,49,050/-.

As against this, the petitioner's gross income during that relevant period is Rs.5,02,576/-. Mr. Kantawala submitted that thus, income of the respondent is more than the income of the petitioner. That apart, respondent has filed two interim applications claiming same relief. The learned trial Judge was, therefore, not justified in directing the petitioner to pay maintenance of Rs.40,000/- per month to the respondent. He submitted that though petitioner had voluntarily agreed to pay Rs.20,000/- per month to the daughter with effect from 01.01.2014, till today not a single overnight access of the daughter is given to him.

5. Mr. Kantawala has taken me through the impugned order and submitted that in so far as the entities mentioned by the respondent in exhibit-A at items No.6 to 11, 15, 17, 19 and 21 are concerned, the same are dead entities. They are not carrying on business for more than a decade. As far as the membership of various Clubs at items No.26 to 29 are concerned, the membership of the club is inherited by the petitioner. He submitted that the learned trial Judge, therefore, was not justified in directing the petitioner to pay Rs.40,000/- per month to the respondent. He submitted that Rs.30,000/- per month awarded towards maintenance to the minor daughter is inclusive of Rs.20,000/- as awarded by order dated 06.05.2014 in Petition No.A-1145 of 2013. The petitioner is not challenging the award of maintenance to the minor daughter. The challenge in the present Petition is restricted only to the maintenance of Rs.40,000/- per month awarded to the respondent-wife.

6. On the other hand, Mr. Cama supported the impugned order. He has taken me through-

a. Record of Ministry of Corporate Affairs in respect of Shashikiran

Consulting LLP where the petitioner is shown as Director as on 06.05.2017;

b. Consent given by the petitioner to act as a Designated Partner of Shashikiran Consulting LLP pursuant to Section 7(3) of the Limited Liability Partnership Act, 2008 in respect of following partnership firms:

1. Riddhi Siddhi Developers,
2. Excellence Enterprises,
3. Mistry Enterprise,
4. S & M Enterprise,
5. Samarth Developers,
6. Shivom Enterprises, and
7. Silver Enterprises;

c. No objection certificate issued by Jay Construction Corporation in favour of Shashikiran Consulting LLP to use flat No.51, Keshar Kunj, Khandubhai Desai Road, Near Rasraj Hotel, Vile Parle (West), Mumbai 400 056;

d. Record of Ministry of Corporate Affairs showing Director / Designated Partner details as on 03.04.2018 and submitted that following companies / LLP are active:

- i. Shashikiran Consulting LLP,
- ii. Santideep Property Private Limited,
- iii. Jaishiva Properties Private Limited,
- iv. Vaibhav Land Development Private Limited,
- v. Pranaya Realtors Private Limited,
- vi. JJ Land Developers Private Limited,
- vii. Mistry Lalji Development Private Limited,
- viii. Nariman Land Developers Private Limited, and
- ix. Kiran Care and Cure Private Limited;

e. Record of Ministry of Corporate Affairs in respect of JJ Land Developers Private Limited showing petitioner as Director as on 31.08.2017;

f. Director's report to the effect that the petitioner will be appointed as a Director of JJ Land Developers Private Limited in the forthcoming Annual General Meeting;

g. Balance-sheet of JJ Land Developers Private Limited as on

31.03.2017 showing closing balance of Rs.7,08,000.75/-;

h. Balance-sheet of the petitioner showing closing balance of Rs.2,65,14,907.76/-, which shows investment and assets owned by the petitioner as on 01.04.2009.

7. Mr. Cama submitted that having regard to the status of the parties, no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have already made detailed reference to the documents, which are relied by Mr. Cama, which shows that the various companies, which are said to be defunct or dead entities by Mr.Kantawala, are prima facie not the dead entities. Considering the documents, it is evident that the financial condition of the petitioner is very sound. Having regard to the status of the parties and for the reasons recorded in paragraphs 6 to 8 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. Respondent is permitted to withdraw the amount deposited by the petitioner in this Court, unconditionally.

(R. G. KETKAR, J.)

Minal Parab