

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4471 OF 2017

Shailesh Milind Gupte

...Petitioner

Versus

Asmita Shailesh Gupte

...Respondent

....

Mr. Saurabh Oka, Advocate for the Petitioner.

Mr. G.R. Sawant a/w. P.C. Mohite I/b. R.S. Bidkar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 24th OCTOBER, 2018

P.C.

1. Heard Mr.Saurabh Oka, learned counsel for the petitioner and Mr.G.R. Sawant, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17.11.2016 passed by the learned 2nd Jt. Civil Judge, Senior Division, Kalyan below Exhibit-16 in M.P. No.819/2015. By that order, the learned trial Judge allowed the application made by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short, 'Act') and directed the petitioner to pay Rs.30,000/- per month to the respondent as maintenance pendent-lite from the date of the application till decision of the Petition.

3. In support of this Petition, Mr. Oka submitted that the learned trial Judge was not justified in passing the impugned order. He submitted that the respondent-wife has admitted in her written statement as also counter claim that since 2016 the petitioner is jobless person. As the petitioner has no source of income, it is impossible for him to pay the maintenance @ Rs.30,000/- per month. He submitted that though the respondent-wife came with the case that the petitioner has 2 flats in Pune, 4 BHK flat at Dombivali and 1 BHK flat and shop premises which he has given on rent, the petitioner has denied that these are his properties. Those properties are self-acquired properties of the deceased maternal grand-father of the petitioner. Those properties have come to mother of the petitioner and her sister. Thus, though the respondent has claimed these are the properties of the petitioner, they are not his properties. He further submitted that he was rendered jobless from 2016. Since then he is maintained by his mother. He further submits that he is not in arrears of maintenance and has paid upto date maintenance as per the impugned order. He, therefore, submitted that the petition requires consideration.

4. On the other hand, Mr. Sawant supported the impugned order. He submitted that in addition to awarding maintenance as per the impugned order, by order dated 11.7.2016, the learned Judicial

Magistrate, First Class, 3rd Court, Kalyan has awarded maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') directing the petitioner herein to pay Rs.10,000/- per month from the date of the application till final disposal of the proceedings filed under the D.V. Act. He submitted that the petitioner has not complied and still the petitioner is not complying said order.

5. Mr. Oka submitted that the maintenance cannot be awarded in two different proceedings. In any case, the learned trial Judge ought to have adjusted the amount of maintenance awarded under the D.V. Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the marriage between the parties was solemnized on 24.1.2002. Out of this wedlock, son Apurva is born on 29.11.2004. The respondent came with the case that the petitioner is working as a Chef on a ship and was getting Rs.2,50,000/- per month as and by way of salary. She also contended that the petitioner has two flats in Pune. He has 4 BHK flat at Dombivali and 1 BHK flat and shop premises which he has given on rent. The petitioner

has Rs.50,00,000/- in his bank account and also fixed deposits. He has immovable property at Murbad and has no other responsibilities.

7. In paragraph-4 of the impugned order, the learned trial Judge has dealt with the say Exhibit-23 filed by the petitioner herein. The learned trial Judge also noted that the petitioner is jobless and is in search of job for keeping himself as alive. After considering the material on record, in paragraph-5 the learned trial Judge observed that the petitioner was working as a Chef in a ship and was getting salary of Rs.2,50,000/- per month. The learned trial Judge also noted that according to the petitioner he is a jobless. Considering the status of the petitioner and the respondent, the petitioner has ability to earn more than Rs.1,00,000/- per month. Having regard to the fact that the parties were living lucrative life and they are from higher middle class families, the learned trial Judge observed that the petitioner is in sound financial position. The income tax returns of the petitioner for the year 2012-2013 showed income of Rs.15,00,000/- per annum, in the year 2013-2014 Rs.7,00,000/- per annum and in the year 2014-2015 Rs.17,00,000/- per annum.

8. That apart, as noted earlier, the learned Magistrate has awarded maintenance of Rs.10,000/- per month in the proceedings filed

under the D.V. Act. The petitioner has not complied said order as of date. Section 24 of the Act reads thus :

“24. Maintenance pendente lite and expenses of proceedings.-- Where in any proceeding under this 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.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

[emphasis supplied]

9. Thus, the Court has to fix reasonable maintenance having regard to the income of the husband and the income of the wife. After considering the material on record, the learned trial Judge has fixed the interim maintenance. For the reasons recorded in paragraph-5 of the impugned order, I do not find that the learned trial Judge has fixed unreasonable maintenance.

10. As mentioned earlier, the husband has not paid the maintenance under the D.V. Act. Mr. Oka submitted that the

maintenance cannot be awarded in two different proceedings. In any case the learned trial Judge ought to have adjusted the amount of maintenance awarded under the D.V. Act. I do not find any merit in this submission. Section 20(1)(d) of the D.V. Act empowers the Magistrate to award maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Section 26 lays down that any relief available under Section 20 amongst others, can be sought for in addition to and along with any other relief that the aggrieved person may seek in suit or legal proceedings before a Civil or Criminal Court. Section 36 lays down that the provisions of D.V. Act are in addition to, and not in derogation of the provisions of any other law, for the time being in force.

11. In the light of aforesaid discussion, the Petition fails and the same is dismissed. The respondent is permitted to withdraw the amount deposited by the petitioner in this Court, unconditionally. Order accordingly.

(R. G. KETKAR, J.)