IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5788 OF 2017

Shri Sachin Shankar Jadhav .. Petitioner
vs.
Smt. Swetambari S. Jadhav .. Respondent

Mr.J.M. Puranik for the Petitioner.
Ms Swapna P. Kode for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 4 DECEMBER 2018.

P.C. :-

1] Heard Mr. Puranik for the petitioner and Ms Swapna Kode for the respondent.

2] The challenge in this petition is to the order dated 29th December 2016 made by the learned Trial Judge. The operative portion of which reads as follows:

> *"1. Application is allowed.*
> *2. The petitioner is directed to pay maintenance pendente lite Rs.10,000/ per month to the respondent from the date of application till pendency of the petition".*

3] Mr. Puranik, the learned counsel for the petitioner, submits that the petitioner – husband had produced income tax returns on record from which it is evident that the income of the petitioner is between Rs.20,000/- to Rs.25/- per month. He submits that the respondent-wife had stated before the Trial Court that she is in service and in receipt of income. However, this vital and relevant aspects have not even been considered by the learned Trial Judge while making the impugned order. For these reasons, Mr. Puranik submits that the impugned order warrants interference.

4] Mr. Puranik relies upon ***Neeta Jain vs. Rakesh Jain – (2010) 12 SCC 242*** to submit that a wife who is admittedly earning salary is not entitled to maintenance under Section 24 of the Hindu Marriage Act, 1955 (H.M. Act). He relies upon ***Alok Kumar Jain vs. Purnima Jain – DRJ 2007 96 115 and Mamta Jaiswal vs. Rajesh Jaiswal – (II) 2000 DMC 170 = 2000 (4) MPHT 457*** in support of the very same propositions. For all these reasons, Mr. Puranik submits that the impugned order warrants interference.

5] Ms Swapna Kode, the learned counsel for the respondent – wife, defends the impugned order on the basis of reasoning set out therein. She submits that the learned Trial Judge has taken into consideration the income of the respondent – wife and only thereafter determined the interim compensation at the rate of Rs.10,000/- per month. She submits that under Section 24(2) of H.M. Act, the wife is entitled to maintenance so as to be able to live substantially the same lifestyle as she was accusotmed to whilst in active matrimony. She submits that there is no error in the impugned order and therefore, this petition may be dismissed.

6] The rival contentions now fall for determination.

7] There is no dispute as regards the liability for payment of interim maintenance. The dispute is only as regards the quantum.

8] The respondent - wife had made disclosure as regards her service and income from her service. The impugned order takes into consideration such disclosure and it is only thereafter that the interim maintenance amount has been determined at the rate of Rs.10,000/- per month. The respondent has produced before this Court the salary slips, from which, it is seen that she earns a salary of Rs.10,000/- to Rs.15,000/- per month. Such earnings, are relevant consideration, but the same have been taken into consideration by the learned Trial Judge while making the impugned order.

9] From the income tax returns placed on record by the petitioner, the income of the petitioner is shown as Rs.25,000/- to Rs.30,000/- per month. However, the record indicates that the petitioner is a share broker in Mumbai. Taking into consideration this factor as well as other material on record, it is really not believable that the petitioner's income is only what is reflected in the income tax returns. The Division Bench of this Court in ***Vinod Mehta vs. Kanak Vinod Mehta – AIR 1990 Bombay 120,*** has held that income tax returns is not the sole guide for determining income of party in such proceeding. In fact, the Division Bench has held that it is common knowledge that income tax returns do not reflect the true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining the income proceedings for maintenance. To the same effect are the observations made by the Delhi High Court in ***Bharat Hegde vs. Smt. Saroj Hegde – AIR 200 Delhi 197.***

10] In *Neeta Jain (supra), the* Apex Court has held that the Court has to take all the relevant factors into account and arrive at a proper amount and maintenance. The income of the respondent -wife is no doubt a relevant consideration. However, the impugned order takes into account such consideration in determining the maintenance amount, the Court has to take into consideration the lifestyle which parties were accustomed to whilst in active matrimony. All these aspects have been considered by the learned Trial Court in making the impugned order.

11] The award of interim maintenance at the rate of Rs.10,000/- per month in the facts and circumstances of the present case cannot be said to be excessive or unreasonable.

12] Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)