

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10525 OF 2015

Suvarna Swaminathrao Jawalkar .. Petitioner
Versus
Swaminathrao V. Jawalkar .. Respondents

Mr. Rahul Nerlekar for petitioner
Mr. Abhishek Patil I/b. Amit S. Dabhekar for respondents

CORAM : M.S.SONAK, J.

DATE : 26th November 2018.

ORAL JUDGEMENT:-

Heard Mr. Nerlekar for petitioner and Mr. Patil for respondent.

2] Rule. At the request and with the consent of both Counsel, rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 21st February 2015 made by the learned trial Judge rejecting the petitioner's application for interim maintenance.

4] Mr. Nerlekar learned Counsel for the petitioner submits that in the application for maintenance, the petitioner has not suppressed any facts. Learned trial Judge was, therefore, not right in rejecting petitioner's claim for maintenance on the ground of suppression. He points out that the petitioner is unemployed and unable to maintain herself, as well as her minor son.

5] The respondent has a stable job and is earning approximately Rs.25,000/-. He points out that the respondent has no other responsibility and, therefore, by way of interim maintenance, the petitioner ought to have been awarded interim maintenance of Rs.7000/- per month and her son Rs.5,000/- per month.

6] Mr. Patil learned Counsel for the respondent submits that the petitioner has suppressed the facts. He pointed out that even in the proceedings under Domestic Violence Act the petitioner had suppressed the facts that she is educated and in fact was even employed. Based upon such suppression, the claim for maintenance under the Domestic Violence Act proceedings came to be

dismissed. Such dismissal was never challenged by the petitioner. Mr. Patil points out that the minor son has also been awarded maintenance of Rs.3,000/- per month which is more than sufficient for the needs of minor son. Mr. Patil points out that even the petitioner is presently having a job and is consequently not in need of maintenance.

7] Mr. Patil places on record the salary certificate issued by Denko Engineering Works where the respondent works as Clerk on consolidated salary of Rs.11,000/- per month. Mr. Patil points out that the respondent is required to take care of his aged parents. Mr. Patil points out that the respondent is already paying maintenance of Rs.3000/- per month in favour of the minor son. He submits that taking into consideration all these facts, the impugned order warrants no interference.

8] Rival contentions now fall for determination.

In the proceedings before the Magistrate under the D.V.Act. The petitioner had applied for maintenance. However, her

claim for maintenance was rejected on the ground that she had failed to disclose that she had studied upto 12th standard and that prior to her marriage, she had worked with one private entity. However, the maintenance of Rs.3000/- per month was awarded by the learned Magistrate in favour of minor son Dhanesh.

9] In the present proceedings for maintenance under section Hindu Marriage Act, the petitioner has stated that she is jobless and does not have qualification to get a good job. On a perusal of the impugned order, it appears that the learned trial Judge has not really gone by the averments made by the petitioner in the present proceedings but has permitted himself to be influenced by the observations made by the learned Magistrate in the proceedings under D.V.Act.

10] Even according to the respondent, the petitioner has studied upto 12th standard. The material which was produced before the learned Magistrate in proceedings under the D.V. Act also indicates that the petitioner, prior to her marriage, was in some private service for a limited period. The averments in the present

proceedings state that the petitioner is not much qualified to get a good job and was jobless. There is no suppression as such involved in the pleadings.

11] The respondent has not produced any material to show that the petitioner is indeed employed or in receipt of any income from any other source. The respondent has produced on record a certificate indicating that his consolidated monthly salary is only Rs.11,000/-. In support of respondent's contention and statement that he is required to look after his aged parents, no material whatsoever has been produced. Learned Counsel for the respondent was unable to make any categorical statement as to whether the respondent has any other brothers or sisters who are also liable to maintain the parents. From the statement annexed by the respondent to the salary certificate there is reference of expenses of Rs.5,000/- per month for purchase of food and other grocery items not only for respondent but also the aged parents.

12] At least at this prima facie stage, the respondent's case that he is solely responsible for aged parents cannot be accepted.

From the material on record this is a fit case where the petitioner ought to be awarded interim maintenance of at least Rs.2500/- per month. Although this amount is less than interim maintenance awarded to their minor son, it is reasonable to proceed on the basis that interim maintenance of Rs.5500/- per month will suffice the requirements of minor son and the petitioner. It is possible for the petitioner to contend that she requires greater amount by way of maintenance. However, at this prima facie stage, we will have to go by salary statement submitted by the respondent which indicates that he is earning Rs.11,000/- per month.

13] For the aforesaid reasons the impugned order to the extent it denies maintenance to the petitioner is interfered with. The respondent is directed to pay to the petitioner interim maintenance at the rate of Rs.2500/- per month from 1st March 2015 onwards.

14] The respondent is granted liberty to clear arrears by way of equated installments spread over six months. However, the respondent to start paying interim maintenance amount now awarded, forthwith.

15] Rule is thus made absolute in the aforesaid terms.
There shall be no order as to costs.

16] It is made clear that all observations in the impugned order as well as the present order are only prima facie in nature and made only for the purpose of considering the claim for interim maintenance. Therefore, the trial Judge need not be influenced by the same while deciding the main application on merits and in accordance with law.

(M.S.SONAK, J.)