

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.3978 OF 2018

Atul Shantilal Gada	]	Petitioner
Vs.		
Darshana Atul Gada	]	Respondent

WITH

WRIT PETITION NO.4553 OF 2018

Darshana Atul Gada	]	Petitioner
Vs.		
Atul Shantilal Gada	]	Respondent

.....

Mr. Dilip G. Bagwe, for Petitioner in W.P. No.3978 of 2018 and Respondent in W.P. No.4553 of 2018.

Ms. Firdaus Moosa i/b Prakash Mahadik, for Petitioner in W.P. No.4553 of 2018 and for Respondent in W.P. No.3978 of 2018.

.....

CORAM : R.G. KETKAR, J.

DATE : 28TH JUNE, 2018.

P.C:

Heard Mr. Bagwe, learned Counsel for the petitioner in W.P. No.3978 of 2018 and for respondent in Writ Petition No.4553 of 2018 and Ms. Moosa, learned Counsel for petitioner in Writ Petition No.4553 of 2018 and for respondent in Writ Petition No.3978 of 2018 at length.

2. Writ Petition No.3978 of 2018 is instituted by Atul Shantilal Gada (hereinafter referred to as '**Atul**'). Writ Petition No.4553 of 2018 is instituted by Darshana Atul Gada (hereinafter referred to as '**Darshana**'). Both these Petitions are directed against the judgment and order dated 3rd February,

2018 passed by the learned Judge Family Court-4 at Mumbai, Bandra in Interim Application No.204 of 2015 in Petition No. 2150 of 2015 filed by Darshana for seeking interim maintenance for herself and her daughter Milloni from Atul. Darshana has claimed maintenance of Rs. 1,00,000/- per month for herself and Rs.30,000/- towards maintenance of her daughter Milloni. In addition to this, she has also prayed for direction to Atul to pay sum of Rs. 3,00,000/- towards deposit and Rs. 40,000/- per month towards the rent for acquiring residential accommodation of 1 BHK flat in Vile Parle (West), Mumbai.

3. Rule. Learned Counsel for respective respondents waive service. Having regard to the nature of controversy raised in these Petitions as also at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and Petitions are taken up for final hearing.

4. In support of the Petition filed by Atul, Mr. Bagwe submitted that the learned trial Judge has not taken into account income tax returns submitted by him. In fact, the learned trial Judge has discarded income tax returns by relying upon decision of this Court in **Vinod Durelal Mehta Vs. Kanak Vinod Mehta, AIR 1990 Bombay 120**. He submitted that in the Petition instituted by Darshana and interim application general/vague allegations/statements are made about income of Atul. He submitted that Atul is a Interior Decorator and he is doing free lance business. He is individual and there is no supporting staff. He is doing his interior decoration business from his residence. He does not have any independent office. He submitted that marriage between the parties was solemnized on 26th January, 1996. At that time parties were residing in one room kitchen in a chawl at Lower Parel along with parents of Atul.

5. Mr. Bagwe submitted that Darshana has acquired Diploma in Fashion Designing. He has invited my attention to a certificate issued by Board of Technical Examinations Maharashtra State certifying that Darshana has obtained Diploma in Dress Designing and Garment Manufacturing. He submitted that Darshana has started her business in Fashion Designing and had opened a Factory for that purpose. In addition, she has obtained certificates in Tarot Basic Course, Numerology Basic Course and Numerology Advance Course in the year 2006-2007. Darshana has also undergone Teachers Training Programme at Tridha.

6. Mr. Bagwe submitted that out of this wedlock, daughter Milloni was born on 2nd May, 2001. At the instance of Darshana, she was admitted in to a School at Vile Parle (West) called Tridha which was far away from Lower Parel where parties were residing. In order to facilitate schooling of Milloni in July, 2006, Atul acquired a three Bedroom, hall, kitchen flat on ownership basis in Vile-Parle (West). On 19th October, 2006, parties shifted to the premises at Vile-Parle (West). On 6th October, 2014, Darshana left her matrimonial house leaving Milloni. She has also lodged First Information Report u/s 377, 498-A, 406, 506 r/w 34 Indian Penal Code 1860 (for short 'I.P.C'). On 29th December, 2014, Darshana took away her daughter. Atul presented Petition for custody on 30th December, 2014. During pendency of the proceedings, consent terms were filed on 20th January, 2015 wherein Atul was given access on every alternative Saturdays and Sundays of the month from 1.00 p.m to 9.00 p.m. Atul was also permitted to meet his daughter in week days as per convenience of the daughter. Atul agreed to pay Rs. 10,000/- per month towards maintenance for daughter and also her School fees, tuition fees and medical expenses. He submitted that Atul is not challenging maintenance awarded to daughter Milloni.

7. Mr. Bagwe invited my attention to the admission given by Darshana in paragraph 12 of main Petition. The learned trial Judge has not considered break up of expenses of Atul while ordering payment of maintenance @ of Rs. 40,000/- per month to Darshana. He, therefore, submitted that the impugned order deserves to be set aside, thereby, directing the learned trial Judge to re-consider the case afresh.

8. In support of Petition filed by Darshana, Ms. Moosa Invited my attention to the statement of account of Atul maintained with Saraswat Bank, Vile Parle (West) and in particular transactions pertaining to deposit of cash from December, 2014 onwards. She submitted that though this material was very much before the trial Court, the trial Court considered only one solitary instance of transfer of amount of Rs. 30,00,000/- on 17th January, 2015 by Atul in favour of his mother Zaverben. She submitted that in fact, in paragraph 50 of the main Petition, she has given details of income of Atul as also of the tours made by the parties. She invited my attention to paragraph 3 of application for interim relief and paragraph 40 of the written statement of Atul as also paragraph 4 of reply dated 19th July, 2016 filed by Atul to application for interim relief. She submitted that the learned trial Judge did not consider prayer (b) made in the interim application. The learned trial Judge observed in paragraph 13 that as Darshana is staying at her parents house, prayer for one B.H.K flat on ownership basis can be decided after parties adduce evidence. She, therefore, submitted that impugned order deserves to be modified by directing Atul to pay maintenance of Rs. 1,00,000/- as also for providing one Bedroom, Hall, Kitchen flat on ownership basis. She further submitted that break up of expenses given in ground (h) of the Petition was not given in the trial Court and the said contention is raised in this Court for the first time and, therefore, the same deserves to be discarded.

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Matter was heard on 4th May, 2018 where statement made by Mr. Atul in paragraph 10 of Writ Petition No.3978 of 2018 that he is not challenging the award of maintenance to the daughter was noted. A short question is, therefore, whether the learned trial Judge is justified in awarding maintenance of Rs. 40,000/- to Darshana and whether the learned trial Judge was justified in holding that prayer for one bedroom, hall, kitchen flat on ownership basis may be considered only after leading evidence is required to be decided.

10. It is not in dispute that Atul has produced statement of account maintained with Saraswat Bank, Vile Parle (West). A perusal of that statement shows that there are various transactions which require explanation from Atul. The learned trial Judge has only considered transaction of 17th January, 2015 by which Rs. 30,00,000/- were transferred by Atul to his mother Zaverben. For instance, the learned trial Judge has not considered that on 9th May, 2015, an amount of Rs. 11,00,000/- was transferred by Atul in favour of his father Shantilal. On the same day, amount of Rs. 11,00,000/- was transferred in favour of his mother Zaverben. Likewise, on 4th December, 2014, 5th December, 2014, 6th December, 2014, 8th December, 2014, 10th December, 2014 and 11th December, 2014, Atul has deposited Rs. 1,00,000/- each in cash. On 17th January, 2015, he had transferred Rs. 30,00,000/- in favour of his mother Zaverben and on 14th March, 2015, Rs. 10,00,000/- each was deposited on three occasions in his account. All these transactions are required to be explained by Atul and are required to be dealt with by the learned trial Judge. As noted earlier, the learned trial Judge has only dealt with solitary instance of transfer of amount of Rs. 30,00,000/- by Atul to his mother. I have also considered assertions made by Darshana in paragraph 50 of the main Petition, paragraph 3 of interim application and paragraph 40 of the written

statement and paragraph 4 of the reply filed by Atul.

11. In my view, the learned trial Judge ought to have considered these aspects and thereafter determined maintenance. Without considering these aspects, the learned trial Judge has fixed maintenance @ Rs. 40,000/- per month, That apart, as noted earlier, the learned trial Judge did not deal with prayer clause (b) of the interim application on the ground that the said prayer can be decided after parties adduce evidence. In my opinion, the learned trial Judge could have directed Atul to provide some amount for securing 1 B.H.K flat at least on leave and licence basis, if not on ownership basis, pending disposal of the interim application. Even that aspect is not considered by the learned trial Judge.

12. In view thereof, impugned order deserves to be modified;

- (a) in so far as clause (2) of the operative part of the impugned order directing Atul to pay maintenance @ Rs. 40,000/- per month to Darshana from the date of application i.e from 28th July, 2015 is concerned, the same shall be treated as ad-interim order.
- (b) in so far as clause 3 of the impugned order is concerned, in view of the statement made by Mr. Bagwe, it is not necessary for the trial Court to deal with this aspect.
- (c) the learned trial Judge will decide grant of maintenance to Darshana as also prayer (b) made in the interim application.
- (d) All contentions of the parties are expressly kept open.

- (e) Parties inform that next date of hearing before the learned trial Judge is 12th July, 2018. The learned trial Judge is requested to dispose of interim application within 4 weeks from the date of appearance of the parties.
13. Rule is accordingly made absolute in the above Petitions with no order as to costs.

[R.G. KETKAR, J.]