

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No.7287 OF 2018

Mr.Rakesh Naraindas Chugh ... **Petitioner**

V/s.

Mrs.Anita Rakesh Chugh ... **Respondent**

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Shri.Kishankumar S. Shetty, Advocate for the Petitioner.

Mr.Abhiraj Parab with Mr.Anil Pratap, Advocate for the Respondent.

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CORAM : M.S.SONAK, J.

DATED : 19th DECEMBER 2018.

P.C. :

1 Heard Mr.Shetty for the Petitioner and Mr.Parab for the Respondent.

2 Rule.

3 Rule is made returnable with the consent and at the request of learned Counsel for the parties.

4 The challenge in this petition is to the Order dated 23/11/2017, the operative portion of which reads as follows :

“ORDER

The application at Ex.13 is hereby allowed as under :

2 The petitioner's claim towards interim maintenance for herself is hereby rejected.

3 The respondent shall pay an amount of Rs.10,000/- p.m. each towards maintenance of both the children from the date of filing of the application i.e. 08/06/2016 till disposal of the main petition.

4 The respondent shall also pay Rs.10,000/- in lump sum to the petitioner towards litigation expenses.”

5 Mr.Shetty, the learned Counsel for the petitioner submits that the petitioner's income is 30,000/- per month. He submits that the claim for maintenance for the children is not based on necessities, but on the basis of luxuries. He refers to paragraph 6 of the application for maintenance in which the petitioner's wife has pleaded that she has to buy for the children mobile, notebook and latest clothing and branded shoes.

6 Mr.Shetty submits that the petitioner has also bought mobile phone for his daughter and has also paid mobile phone charges. He submits that demand of latest clothes and branded shoes is nothing but demand for luxuries. He submits that the petitioner is taking care of Muskan – daughter, who resides with the petitioner. He submits that the petitioner also takes care of all the necessities of his son Rahul. The petitioner states that he is also providing lunch and dinner to the children. For all these reasons, he submits that the maintenance of Rs.10,000/- per month each of the children is grossly excessive and warrants interference.

7 Mr.Parab, the learned Counsel for the respondent submits that there are several expenses towards maintenance of the children and it is respondent/wife, who has been bearing those expenses. He defends the main Order on the basis of reasonings therein. Mr.Parab agrees that an amount of Rs.5,000/- each may be deposited in a recurring deposit, so that, such amount can take care of future needs of the two children.

8 The rival contentions now fall for determination.

9 There is evidence on record by way of admissions that the petitioner has been in the textile business from last eight to ten years. Before that, the petitioner claims that he was assistant to his father, who was in the textile business. The father was giving him salary of Rs.8,000/- per month. The petitioner states that he earns Rs.30,000/- per month. On the basis of material on record, *prima facie* it cannot be accepted that the income of the respondent is only Rs.30,000/- from the textile business which he undertakes for the last several years.

10 Based upon a single line in the application made by the respondent No.2, it cannot be said that the claim for maintenance is to satisfy the children's luxuries or pamper them. This Court has actually interviewed the children, who are found to be most responsible children. The children expressed that their parents must come together and stop these disputes which are, no doubt

taking toll on the children. Nevertheless, it is necessary to record that the children were most responsible and expressed deep affection and love to both their parents. This is despite the fact that Raul resides with the respondent/wife and Muskan stays with the petitioner. Therefore, there is no merit in a contention that the maintenance as awarded was solely to purchase all luxury items for the children.

11 There is really no error in the impugned Order, except that award Rs.10,000/- per month in favour of the two children may not be best interest of children themselves at the present stage. Therefore, the impugned Order deserves some modification. In the result, the petitioner can be directed to invest in recurring deposit of Rs.5,000/- per month in the names of each of the children. The balance amount of Rs.5,000/- per month be paid by way of maintenance to each of the children. Muskan is presently 18 years of age and Rahul is 14 years of age. Both have expenses. Considering their age and their educational and social needs, it cannot be said that maintenance of Rs.5,000/- per month to each of the children is excessive. Balance of Rs.5,000/- per month which is now directed to be deposited in Recurring Deposit is also necessary for the maintenance of the children though it is not advisable that this amount is given to them upfront.

12 The apprehension expressed by the petitioner that the respondent/wife may spend the amount in case the same is

awarded to the children has no basis and in any case, no longer survives if the direction is given to invest 50% of the maintenance amount in the aforesaid terms.

13 The learned Counsel for the petitioner also opposes the award litigation expenses of Rs.10,000/- to the respondent/wife. He submits that the respondent is earning sufficient and, therefore, there is no requirement for payment of litigation expenses. The aforesaid contention is entirely untenable. Merely because a person is earning sufficient amount, that does not mean that such person is to be compelled to spend that amount on litigation. Cost are awarded not because the respondent/wife was unable to afford the litigation, but because she was forced to litigate. In fact, costs are required to be awarded in this petition as well. However, on request of Mr.Chugh, no such costs are awarded in this petition.

14 For all the aforesaid reasons, this petition is disposed of with with the following Order :

ORDER

- (a) Quantum of amount of maintenance is not interfered with.

- (b) However, the petitioner shall pay maintenance of Rs.5,000/- each to the children and invest the balance of Rs.5,000/- per child in Recurring Deposit in the names of

the children. Such deposits shall abide by final Orders that shall be made by the Family Court in the Petition. Under no circumstances, amount shall be withdrawn from such invested amount.

- (c) Save and except modified as aforesaid, impugned Order shall operate in full force.
- (d) Rule is made absolute in terms of above directions.
- (e) There shall be no Order as to costs.

(M.S.SONAK, J.)