

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8129 OF 2018

Nileash Hiranman Pagare

...Petitioner

Versus

Vaishali Nilesh Pagare

...Respondent

....
Mr. J.P. Kharge, Advocate for the Petitioner.
....

CORAM : R. G. KETKAR, J.

DATE : 10th OCTOBER, 2018

P.C.

1. Heard Mr.J.P. Kharge, learned counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the order dated 8.3.2018 passed by the learned Judge, Family Court No.6 at Mumbai below Exhibit-8 in Petition No.A-1285/2016. By that order, the learned trial Judge partly allowed the interim application. Clauses (2) and (3) of the operative part of said order reads thus:

“(2) The respondent is directed to pay an amount of Rs.7,000/- per month to the applicant towards the maintenance allowance from the date of filing of the interim maintenance application.

(3) The amount of maintenance allowance of Rs.7,000/- per month shall be inclusive of maintenance amount if any granted to her in any other proceeding.”

3. In support of this Petition, Mr. Kharge submitted that the gross-salary of the petitioner is Rs.24,399/-. He has invited my attention to the salary slips of the petitioner which shows following deductions :

LIC premium	Rs.3045/-
Contribution towards NCPF	Rs.3,670/-.
Monthly installment of Municipal Co-operative Bank	Rs.10,409/-.

4. Mr. Kharge submitted that after deduction, the petitioner is receiving net-salary of Rs.6,375/-. He has to maintain his mother who is suffering from high B.P. and has to incur other medical expenses. As against this, the respondent is working in 'Chandan Dry Fruits' and is getting salary of Rs.10,000/- per month. Said fact is also admitted by her in her statement dated 1.1.2016 recorded in police station, Gowandi. He submitted that considering the net-salary received by the petitioner as also his other responsibilities, the maintenance awarded by the learned trial Judge is highly exorbitant and oppressive. At the highest the petitioner may be directed to pay maintenance of 1/5 th of the gross-salary which comes to Rs. 4,880/-. He, therefore, submitted that the petition requires consideration.

5. I have considered the submissions advanced by Mr. Kharge. I have also perused the material on record. The learned trial Judge has dealt with the deductions from the gross-salary of the petitioner and

observed that for these deductions the petitioner cannot get rid of his liabilities and responsibilities to maintain the respondent-wife. Mr.Kharge was not in a position to show that the deduction of Rs.3,670/- towards contribution of NCPF is non-voluntary deduction. In other words, the deductions of LIC premium as also the contribution towards NCPF are voluntary deductions. That apart, the learned trial Judge has also noted that the respondent is working in a dry fruit shop and is earning Rs.5,000/- per month. After considering the respective income of the parties, the learned trial Judge ordered that the amount of maintenance allowance of Rs.7000/- per month is inclusive of maintenance amount, if any granted to her in any other proceeding.

6. Mr.Kharge submitted that the respondent has filed proceedings for maintenance under the Protection of Women from Domestic Violence Act, 2005. Thus the maintenance awarded by the learned trial Judge is also inclusive of the maintenance, if any granted to the respondent in any other proceeding. Understood thus, I do not find that the learned trial Judge has committed any error in passing the impugned order.

7. Even otherwise, the petitioner is ready and willing to pay maintenance of Rs.4,880/-. In view thereof as also for the reasons

recorded in paragraph-3 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

8. The petitioner has deposited the amount of Rs.1,26,000/- in the Family Court, Bandra in pursuance of the order dated 4.9.2018. The respondent-wife is permitted to withdraw that amount, unconditionally.

(R. G. KETKAR, J.)

Deshmane (PS)