

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7209 OF 2018

Montu Vasantkumar Jain	]	Petitioner
Vs.		
Purvi Montu Jain	]	Respondent

.....

Mr. Ish Jain i/b Kiran Jain & Co., for Petitioner.

.....

CORAM : R.G. KETKAR, J.

DATE : 24TH AUGUST, 2018.

P.C.

Heard Mr. Jain, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 8th February, 2018 passed by the learned Judge, Family Court-6, Mumbai in Interim Application No.2 of 2016 in M.J. Petition No. A-608 of 2015. By that order, the learned trial Judge partly allowed the application Exhibit 10 made by the respondent/wife and directed the petitioner/husband to pay maintenance of Rs. 10,000/- per month to the respondent from the date of filing of the application. The petitioner is further directed to pay amount of Rs.5000/- per month towards rent from the date of the order to occupy separate accommodation. The petitioner is also directed to pay an amount of Rs. 10,000/- by way of cost of the application and bear his own costs.

3. By order dated 18th July, 2018 while issuing notice to the respondent, this Court directed the petitioner to deposit Rs. 1,25,000/- in the

Family Court within three weeks from the date of the order, failing which, the Petition was to stand dismissed automatically without further reference of the Court. In case, the petitioner deposits an amount of Rs.1,25,000/- in the Family Court within the stipulated period, notice was to be issued to the respondent returnable on 24th August, 2018. Subject to the petitioner depositing an amount of Rs.1,25,000/-, ad-interim order in terms of prayer clause (b) was granted. Mr. Jain states that the petitioner has deposited Rs. 1,25,000/- in the Family Court, Mumbai within the stipulated period. The matter was heard in the morning session and was adjourned in the afternoon session so as to enable the learned Counsel for the petitioner to take instructions from the petitioner as to whether the petitioner is ready and willing to deposit arrears of maintenance. Upon taking instructions from the petitioner, he states that the petitioner is not ready and willing to deposit arrears as he has already deposited Rs. 1,25,000/- as per the order dated 18th July, 2018.

4. In support of this petition, Mr. Jain submitted that the learned trial judge proceeded on the premise that the properties mentioned in the interim application filed by the respondent are admitted by the petitioner. He has taken me through the reply filed by the petitioner to the interim application and in particular paragraph 22 (c). In paragraph 22(c), the petitioner has asserted that the premises being Flat No.13, Venu Apartment, 1st Floor, 40, B.J. Beorkar Road, Dadar, (East), Mumbai stands in the joint name of his parents. Flat situate at Shree Nakoda Bhavan, Ladpura, Itwari, Nagpur – 440 002 stood in the name of his father and the same was sold out by him. Office being “Mahavir Dresses” at Cosmos Building, Gokhale Road, Ashish Ind. Estate, Dadar (West), Mumbai stands in the sole name of his father. Shop being Gudganj, Itwari, Nagpur-2 stood in the sole name of his father and the same was sold out by him. Two houses at Village Bijapur, Dist Pali, Rajasthan stand

in the name of his father. In short, he submitted that the properties at Shree Nakoda Bhavan, Ladpura, Itwari, Nagpur – 440 002 and shop at Gudganj, Itwari, Nagpur-2 were sold out by his father. The learned trial Judge, however, proceeded on the footing that the said properties are still available in the family of the Petitioner.

5. Mr. Jain further submitted that the learned trial Judge proceeded on the premise that no attempts were made by the petitioner for ensuring that the respondent co-habits with him. The learned trial Judge ignored the letter dated 23rd January, 2014 issued through the Advocate calling upon her to co-habit with the petitioner. This was followed by letters dated 20th November, 2014 and 5th December, 2014. It is only after one year i.e on 27th January, 2015, the respondent replied these notices. In short, Mr. Jain submitted that the petitioner made all attempts for co-habitation with the respondent. He also invited my attention to paragraph 20 of the M.J. Petition where the petitioner has set out in detail the manner in which the respondent left the company of the petitioner. The petitioner's mother got paralysis attack and the petitioner and members of the family of the petitioner took her to the hospital. In paragraph 22, it is asserted that instead of helping the petitioner when his mother was in the hospital, the respondent took all the jewellery of the petitioner's mother and came from Nagpur to Mumbai without any intimation or information to the petitioner, his family members, relatives or neighbours and kept them in dark. He submitted that it is in these circumstances, the respondent left company of the petitioner. The learned trial Judge has ignored these vital documents and passed the impugned order.

6. I have considered submissions advanced by Mr. Jain. I have also perused the material on record. A perusal of paragraph 22 (c) of the reply filed by the petitioner to interim maintenance application shows that the petitioner

did not disclose as to when flat at Shree Nakoda Bhavan, Ladpur, Itwari, Nagpur was sold by his father and to whom. The same thing is about Shop at Gudganj, Itwari, Nagpur which was sold by his father. No particulars are furnished as regards when the sale was effected and to whom the flat and shop were sold. In any case, a perusal of paragraph 22 (c) shows that Flat No.13 at Venu Apartment, 1st Floor, 40, B.J. Beokar Road, Dadar (East), Mumbai stands in the joint name of parents of the petitioner. Office being “Mahavir Dresses” at Cosmos Building, Gokhale Road, Ashish Ind. Estate, Dadar (West), Mumbai stands in the name of the petitioner's father. Two Houses at Village Bijapur, Dist Pali, Rajasthan stand in the name of the petitioner's father.

7. In the application for interim maintenance, the respondent has asserted that the petitioner is engaged in the business with his father and younger brother and is residing in the joint family. The petitioner and his father own various properties. In paragraph 2, she has given various properties owned by the family. In paragraph 3, she has specifically asserted that she has no source of income and completely depends upon her father for livelihood and day to day need. She has claimed maintenance of Rs. 20,000/- per month and Rs. 20, 000/- towards costs of legal expenses.

8. In so far as reliance placed by the petitioner on the letters dated 23rd January, 2014 and 20th November, 2014 is concerned, the respondent gave reply on 27th January, 2015. In paragraph 22, she had denied contention of the petitioner that on 15th March, 2013, she left matrimonial home without any intimation to the petitioner and his family. She has also in the written statement filed opposing the marriage petition has described the circumstances in which she was thrown out of the matrimonial house. She denied that she has deserted the petitioner but the petitioner and his family members have thrown her out of the matrimonial home in the circumstances set out in the

written statement. Be that as it may, it is a matter of evidence between the parties. For the time being, the Court is concerned with the amount of interim maintenance.

9. For the reasons recorded in paragraph 4 of the impugned order and after considering the material on record, I do not find that the learned trial Judge has committed error in awarding the maintenance @ Rs. 10,000/- per month to the respondent.

10. For these reasons also, no case is made out of invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]