

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6025 OF 2017
WITH
CIVIL APPLICATION NO.1804 OF 2017

Himanshu Kumar ...Petitioner
vs.
Trupti Himanshu Kumar ...Respondent

Mrs. Seema Sarnaik a/w. Mr. A.S. Tamhane, Mrs. Sangita Salvi,
for the Petitioner.

Mr. Hafeez Patanwala i/b. Mr. Abhay Nevagi & Associates, for the
Respondent.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 13, 2018

P.C.:

. The challenge in this Petition is to the order dated 4th May, 2017 made by the Family Court, Pune below Exhibits 25 and 29 in Darkhast No. 157 of 2015. The operative portion of the impugned order dated 4th May, 2017 reads as follows:

- (i) Application at Exh. 25 and 29 are partly allowed.
- (ii) The salary of J.D. is attached to the extent of Rs. 50,000/- per month till the recovery of Rs. 5,21,000/-. The KTMG, the employer of the J.D. be informed accordingly.
- (iii) The issue about the claim of 200 Dinars for reconciliation period is kept open.
- (iv) Issue letter of attachment of salary accordingly.

2. Mrs. Sarnaik, learned counsel for the Petitioner on the

basis of express instruction from the Petitioner makes a statement that the Petitioner has, through regular banking channels paid to the Respondent the amount of Rs. 5,21,000/-. This includes the amount of Rs. 2 lakhs deposited in this Court.

3. Mr. Hafeez, the learned counsel for the Respondent states that he has already withdrawn his appearance. Therefore reports no further instruction in the matter.

4. Since, the Respondent is neither present nor represented, it would be appropriate if the Family Court at Pune ascertain whether the entire amount of maintenance as indicated in the order 4th May, 2017 is indeed paid by the Petitioner to the Respondent. If upon ascertainment, this is found to be correct then obviously there is no necessity for the attachment of the salary to continue. The attachment as imposed by the impugned order in such case will have to be lifted and the Family Court may do the same.

5. In so far as the amount of Rs. 2 lakhs deposited in this Court is concerned, Mrs. Sarnaik submits that no leave be granted to the Respondent to withdraw this amount. She submits that this additional amount of Rs. 50,000/- p.m. was not due and payable and therefore if this amount is allowed to be withdrawn then there

will be excess payment to the Respondent.

6. At this stage, it is not possible to accept such submission. The impugned order itself records that the Respondent had claimed maintenance @ Rs. 50,000/- for the period of 17th August, 2009 to 31st December, 2012 and further this period and maintenance @ Rs. 50,000/- and Rs. 25,000/- p.m. was not disputed. Only the dispute about the amount of Rs. 200 Dinars per day was kept open.

7. Accordingly, there is no reason to deny the Respondent to withdraw the amount of Rs. 2 lakhs which is deposited in this Court.

8. This Petition is accordingly disposed of with the following order:

(a) The Respondent is permitted to withdraw the amount of Rs. 2 lakhs deposited by the Petitioner in this Court.

(b) The statement made on behalf of the Petitioner that the Petitioner has paid the entire arrears is rewarded. However, the Family Court is requested to ascertain whether such amount is indeed paid by the Petitioner and received by the Respondent. The Family Court to ascertain whether total amount of Rs. 5,21,000/- which includes the deposit of Rs. 2 lakhs made in this Court, is

received by the Respondent. Upon such ascertainment and not earlier the order of attachment of Petitioner's salary may be lifted.

(c). The Petitioner to appear before the Family Court at Pune on 7th January, 2019 at 11.00 am and file an authenticated copy of this order.

(d). Thereafter upon hearing both the sides, the learned Family Court is requested to complete the exercise of ascertainment as above, within a period of maximum two months. During this period, the stay on the order of attachment to operate. However, if on ascertainment, the learned Family Court comes the conclusion that there are payments due to the Respondent, then, the stay to stand vacated and the order of attachment shall revive and or in any case the Family Court is at liberty to make fresh order of attachment of salary.

(e). The Family Court is directed to expedite the hearing in the main Petition before it.

9 The Petition is disposed of in the aforesaid terms.

10. The Civil Application does not survive and accordingly disposed of.

(M. S. SONAK, J.)