

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7015 OF 2015
WITH
CIVIL APPLICATION NOS.2220 OF 2016
IN
WRIT PETITION NO. 7015 OF 2015

Dharmendra Singh Gosain .. Petitioner
vs.
Sarita D. Gosain .. Respondent

Mr. Lobo Glenn Anthony for the Petitioner.
Ms Garima Randhawa i/b Ms Shabana F. Sothe for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 5 DECEMBER 2018.

P.C. :-

1] Heard Mr. Lobo for the petitioner and Ms. Randhwa for the respondent.

2] The challenge in this petition is to the order dated 13th May 2015. The operative portion of which reads as follows:

- “1. The application below Exh.12 is partly allowed.*
- 2. The respondent shall pay monthly maintenance @ Rs.3,000/- for the petitioner – wife and Rs.2,500/- for the minor child, from the date of application i.e. 11.11.2014 to till disposal of petition.*
- 3. The respondent shall pay all the educational expenses of the minor child Ishant either directly before school authority or to the petitioner after production of valid receipt from the date of order to till disposal of petition”.*

3] Mr. Lobo, the learned counsel for the petitioner, submits that it is the respondent – wife who has abandoned the matrimonial home and therefore she is not entitled to any maintenance. He submits that even now the petitioner is ready to accept the respondent -wife and the son in the matrimonial home. He submits that on this ground, the order for interim maintenance may be interfered.

4] Mr. Lobo further submits that the petitioner does not have any substantial source of income. He only undertakes some small business and even there his earning capacity is affected on account of pending litigation. He, therefore, submits that the award of maintenance at the rate of Rs.5,500/- per month is quite excessive taking into consideration the financial circumstances of the petitioner.

5] Ms Garima Randhawa, the learned counsel for the respondent, that the petitioner is in arrears for payment of interim maintenance. She points out that only after execution proceedings were taken out the petitioner has paid Rs.57,000/- or thereabouts. She submits that the respondent – wife has no source of income and therefore, the

respondent is entitled to interim maintenance. She submits that Rs.5500/- per month is in fact very little interim compensation. She submits that Ishant is a school going child (XIth standard) and there are expenses for his education as well as interim maintenance. For all these reasons, she submits that this petition may be disposed of.

6] The rival contentions now fall for determination.

7] There is absolutely nothing on record to indicate that the respondent -wife has any independent source of income. Therefore, the respondent – wife and the minor son Ishant are obviously entitled to interim maintenance.

8] On the aspect of the petitioner's income, the petitioner, apart from stating that he undertakes small business, has placed no details of his actual income. The learned Family Court has therefore, drawn certain inferences on the basis of other material available on record. The learned Family Court has determined maintenance at the rate of Rs.3,000/- per month for the wife – respondent and Rs.2,500/- per month for Ishant. Ms Randhawa is correct in her submission that the interim maintenance has been determined on the conservative basis.

The respondent stays in Mumbai and it cannot be said that the interim maintenance of Rs.5500/- per month is excessive or unreasonable.

9] Accordingly, there is no error of jurisdiction or unreasonability involved in the making of impugned order. This petition is therefore, liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

10] Pending Civil Application does not survive and the same is disposed of.

11] At the request of Mr. Lobo, the learned counsel for the petitioner, the hearing in Petition No.A-1866 of 2013 before the Family Court at Bandra is expedited.

12] Further, it is made clear that none of the observations in the impugned order or for that matter the observations in the present matter need influenced the Family Court whilst disposing of Petition No.A-1866 of 2013. The said petition will have to be disposed of on its own merits and in accordance with law. Both parties to cooperate with the Family Court in the matter of disposal of the petition.

(M. S. SONAK, J.)