

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7351 OF 2016

Delnaz Berzin Master	]	Petitioner
Vs.		
Berzin Master	]	Respondent

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Ms. T.F. Irani, for Petitioner.
Mr. Rupesh Lanjekar, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 21ST JUNE, 2018.

P.C.

Heard Ms. Irani, learned Counsel for the petitioner and Mr. Lanjekar, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/wife has challenged the judgment and order dated 19th March, 2016 passed by the learned Judge, Family Court No.2, Mumbai below Exhibits 14 and 47 in Petition No.A-2575 of 2012. Application at Exhibit 14 was taken out by the petitioner/wife claiming maintenance @ Rs. 50,000/- per month towards her maintenance and children's maintenance. Application at Exhibit 47 was taken out by the respondent/husband for reducing interim maintenance awarded @ Rs. 30,000/- per month as per order dated 19th March, 2016 to Rs. 15,000/- per month.

3. By the impugned order, the learned trial Judge directed the respondent to pay maintenance @ Rs.30,000/- per month from the date of the application Exhibit 14 i.e from 7th February, 2013 till October, 2014. In addition, respondent is directed to pay educational expenses of both the

children from November, 2014. The respondent is directed to pay Rs. 10,000/- per month to both the children, total Rs. 20,000/- per month. Claim of the petitioner for maintenance after November, 2014 is rejected. The learned trial Judge further ordered adjustment of maintenance paid by the respondent, if any, till date from the amounts calculated @ Rs. 30,000/- per month.

4. Rule. Mr. Lanjekar waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

5. In support of this Petition, Ms. Irani invited my attention to application Exhibit 14 filed by the petitioner and also reply Exhibit 49 filed to the respondent's application Exhibit 47 and in particular following portion of paragraph 7;

“The freelance work the Petitioner takes up are purely child related. The Petitioner has very few assignments and at times, no assignments for months and no income coming in at all. Whenever she has earned through the one-off assignments, she has earned between Rs. 7,000/- and Rs. 10,000/- only. The Petitioner also has to incur costs for her work for materials and venue charges if and when she does take up any assignment. So, with the expenses that go out, the money actually earned by the Petitioner is much less”.

She submitted that while deciding applications 14 and 47, the learned trial Judge proceeded on the premise that the petitioner is earning regular income of Rs.7,000/- to 10,000/- per month. She submitted that the finding recorded by the learned trial Judge is clearly contrary to the stand of the petitioner as reflected in reply Exhibit 49. She, therefore, submitted that the impugned order deserves to be modified, thereby directing the respondent to pay maintenance to petitioner wife as well.

6. On the other hand, Mr. Lanjekar supported the impugned order. He submitted that after considering the material on record, the learned trial Judge declined to award maintenance to the petitioner/wife as she is regularly earning income.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of the impugned order shows that in paragraph 5 the learned trial Judge referred to reply Exhibit 49 filed by the respondent and observed thus;

“In reply to Exh.47, on Page 5 the petitioner has pleaded that she felt financially insecure and compelled to begin freelance work in November 2014. She further states that she has earned in between Rs.7000/- to Rs.10,000/- p.m. In the said amount she has to incur costs. The petitioner has admitted that from November, 2014 she has begin to work and earn”.

8. In paragraph 9, the learned trial Judge again proceeded to observe that petitioner/wife has started earning and according to her, she earns Rs.7,000/- to 10,000/- per month. In my opinion, the learned trial Judge committed serious error in proceeding on the premise that the petitioner regularly earns income of Rs.7,000/- to 10,000/- per month. The learned trial Judge did not properly consider the reply Exhibit 49 filed by the petitioner and more particularly portion which is extracted hereinabove. In view thereof, the learned trial Judge was not justified in declining to award maintenance to the petitioner/wife from November, 2014.

9. In the light of the aforesaid discussion, impugned order is set aside. Application at Exhibit 14 is restored to the file of the Family Court. Mr. Lanjekar states that within four weeks from today, the respondent will file additional reply along with documents on which he proposes to rely and serve copy on the other side during this period. Ms. Irani assures that the petitioner

will file rejoinder within three weeks from receipt of the additional reply and serve copy on the other side during this period.

10. During pendency of application Exhibit 14, order dated 7th December, 2013 below Exhibit 34 shall stand restored. By way of abundant caution, it is clarified that the respondent shall go on paying maintenance @ Rs. 30,000/- per month in addition to the School fees to the petitioner and her children on ad-hoc basis.

11. The learned trial Judge is requested to dispose application Exhibit 14 within four weeks from completion of the pleadings. All contentions of the parties are expressly kept open. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]