

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2704 OF 2018

Mr. Ganesh A. Salunke .. Petitioner
vs.
Mrs. Pooja G. Salunke and anr. .. Respondents

Mr. S.S. Panchpor for the Petitioner.
Mr.P.J. Thorat for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 13 DECEMBER 2018.

ORAL JUDGMENT :-

1] Heard Mr. S.S. Panchpor, the learned counsel for the petitioner and Mr. P.J. Thorat, the learned counsel for respondent No.1.

2] The challenge in this petition is to the order dated 9th April 2018, by which, the learned Family Court has directed the petitioner to pay maintenance at the rate of Rs.20,000/- per month to the respondent from the date of application.

The operative portion of the impugned order reads thus:

- “1. Application is partly allowed with costs.*
- 2. The respondent is directed to pay an interim maintenance of Rs.20,000/- per month to the petitioner from the date of application till the decision of the petition.*
- 3. The prayer for travelling expenses for every date is*

rejected.

4. The respondent is further directed to pay an amount of Rs.10,000/- to the petitioner towards litigation expenses”.

3] Mr. S.S. Panchpor, the learned counsel for the petitioner submits that the petitioner was earlier employed with Infosys but has since resigned and commenced legal practice. He submits that presently, since, the petitioner is only a junior, on probation his income is Rs.5250/- per month. Mr. Panchpor submits that in any case, the income tax returns placed on record by the petitioner indicate that his monthly income was between Rs.27,000/- to Rs.28,000/- per month. He submits that at the stage of deciding the issue of interim maintenance, at the highest, this figure should have been taken as monthly income of the petitioner. He therefore, submits that the award of Rs.20,000/- per month is excessive and exorbitant.

4] Mr. Panchpor submits that the car which is stated to be in the name of the petitioner was purchased in the year 2010 by his parents when the petitioner was not earning any income. He further submits that the agricultural property of

about 3 HA 60 R which is in the name of the petitioner is Jirayat land, from which, there is hardly any income. He, therefore, submits that based upon these considerations, the learned Family Court was not justified in directing the petitioner to pay maintenance at the rate of Rs.20,000/- per month.

5] Mr. Panchpor submits that the learned Family Court has ignored affluence of the respondent's parents, but at the same time, taken into consideration the immovable property owned by the petitioner's parents, with which the petitioner, has absolutely no relationship. He submits that this is a serious error in the impugned order. Mr. Panchpor submits that at one stage, the petitioner had stated that she resides in Pune and on the other hand, she has claimed travelling expenses on the basis that she has to travel from Baramati to Pune. He submits that there are several inconsistencies in the pleadings and all these factors have not been considered by the learned Family Court whilst making the impugned order. For all these reasons, Mr. Panchpor submits that the impugned order warrants interference.

6] Mr. Thorat, learned counsel for the respondent, defends the impugned order on the basis of reasons set out therein. He submits that the material on record establishes that the petitioner is easily able to afford payment of maintenance amount awarded by the Family Court. He submits that the petitioner has admitted that he has no responsibility to maintain his parents. The petitioner has an apartment to live in, for which he does not have to expend any much amount. The petitioner has car and other agricultural properties. In contrast, the respondent, has to make her own arrangement for residence. Taking into consideration all these factors, Mr. Thorat submits that there is absolutely nothing excessive in the award made by the impugned order.

7] The rival contentions now fall for determination.

8] By the impugned order, the learned Family Court has only determined the interim compensation. The parameters for deciding the issue of interim maintenance are fairly well settled. There is nothing on record show that the respondent – wife has any independent income. In contrast, it is not even

disputed that the respondent, at least on the date when the application for maintenance was filed, was serving in Infosys Company at Pune. In addition, there is material on record to indicate the petitioner is the owner of the Car as well as immovable properties. Therefore, even if the properties owned by his parents are completely excluded from consideration, it cannot be said that the petitioner has no means to pay maintenance at the rate awarded in the impugned order.

9] No doubt, the income tax returns placed on record by the petitioner indicate that his income is approximately Rs.30,000/- or thereabouts per month. However, as has been held by the Division Bench of this Court in case of **Vinod Mehta vs. Kanak Mehta – AIR 1990 Bom. 120**, the income tax returns cannot be the sole guide for determining income of a party in proceedings for interim maintenance. In fact, the Division Bench of this Court has observed that it is common knowledge that income tax returns do not reflect true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining income in proceeding for maintenance.

10] The affluence, if any, of the respondent's parents is quite irrelevant in such matters. From perusal of the impugned judgment, though, there is reference to the properties owned by the petitioner's parents, it cannot be said that the award of maintenance is based by taking this factor into consideration. The reference is simply for the purpose of indicating that it is not the petitioner's responsibility to maintain his parents. Reference is also perhaps for considering the type of lifestyle which, the parties were accustomed to before their relationship may have strained.

11] At this stage, the learned Family Court was quite right in proceeding on the basis that the petitioner has some income from his agricultural properties. The issue as to whether the properties yield no income or not can be gone into in some detail once the evidence is led by the parties. However, it cannot be said that *prima facie* findings recorded by the learned Family Court are based on no material or otherwise suffered from any perversity.

12] In ***Bharat Hegde vs. Smt. Saroj Hegde – AIR 2007 Delhi 197***, the learned Single Judge of Delhi High Court held that likely income from capital assets of husband is relevant factor to be considered.

13] The petitioner has produced on record a Certificate issued by Mr. Venkatesh S. Waghmare, Advocate and Tax Consultants to the effect that from 10th March 2018 the petitioner is working as Account, Taxation and Legal Assistant (Juniorship) for monthly remuneration of Rs.5250/- for the first six months and after six months, it will be increased as per office remuneration structure. The petitioner has not disclosed as to whether there has been any increase or not. In any case, such Certificate will have to be assessed in the context of the admitted facts that at least until 11th January 2018, the petitioner was working as an Accountant at Infosys and even as per the Certificate dated 18th January 2018 issued by Infosys, the cost to the company as on his last working day was Rs.4,22,292/- per annum.

14] There is really no error, much less, jurisdictional error in the view taken by the learned Family Court. In such matters, some reasonable guess work is inevitable, particularly, because neither of the parties bother to place full and accurate material before the Courts. In this case, even the Family Court, has taken cognizance of the address stated by the respondent in the cause title to her application and denied the respondent any travelling allowances. However, taking into consideration overall facts and circumstances and the nature of *prima facie* determination it cannot be said that the interim maintenance awarded is grossly excessive or exorbitant.

15] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

16] At this stage, learned counsel for the petitioner, applies for a stay on the order which has just been pronounced. He submits that the petitioner has already deposited Rs.2 Lakhs before the Family Court and the petitioner will have no objection if the respondent withdraws an amount of

Rs.50,000/- therefrom. Accordingly, the respondent is granted liberty to withdraw Rs.50,000/- from out of amount of Rs.2 Lakhs deposited by the petitioner before the Family Court. The interim relief which this Court had granted on 19th July 2018 is extended by a period of four weeks from today.

(M. S. SONAK, J.)