

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9453 OF 2018

Mr. Avishek Sen ...Petitioner
Versus
Mrs. Taniya Bose ...Respondent

....
Mr. R. Shekhawat i/b. Raj Legal, Advocate for the Petitioner.
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CORAM : R. G. KETKAR, J.

DATE : 11th OCTOBER, 2018

P.C.

1. Heard Mr.R. Shekhawat, 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 11.6.2018 passed by the learned Judge, Family Court, Thane below Exhibit-15 in Petition No.A.252/2016. By that order, the learned trial Judge partly allowed the application filed by the respondent-wife under Sections 24 and 25 of the Hindu Marriage Act, 1955 (for short, 'Act') and directed the petitioner-husband to pay Rs.10,000/- per month to the respondent from the date of the order towards her interim maintenance.
3. In support of this Petition, Mr. Shekhawat submitted that in the application filed by the respondent, she asserted that she is drawing

salary of Rs.46,000/- per month in hand. In paragraph-50, she contended that she has to spend Rs.12,000/- towards flight to and from Hyderabad to Thane. She is required to incur Rs.5,000/- per day for every trip. For every trip the total expenses required to incur is Rs.19,000/-. He invited my attention to Section 24 of the Act to contend that it is only in the event of the party having no independent income sufficient for her support, the respondent can claim maintenance from the petitioner-husband. The net-salary of the respondent is Rs.46,000/- per month, it cannot be said that she does not earn sufficient income to maintain herself. Mr.Shekhawat submitted that the petitioner's father was a cancer patient. The petitioner incurred expenses of Rs.20 Lakhs towards the cancer treatment. Unfortunately in the year 2017, the petitioner's father expired. The petitioner's mother is residing in a rented premises at Calcutta. The aged mother of the petitioner is dependent on him. He submitted that the learned trial Judge directed the petitioner to pay Rs.10,000/- per month ignoring the fact the cost of leaving at Mumbai is very much high as compared to the cost of leaving at Hyderabad. He has also invited my attention to paragraph-3(e) of the Petition setting out the approximate expenses of Rs.94,686/- per month as against his net salary of Rs.92,500/-. He, therefore, submitted that the impugned

order deserves to be set aside.

4. I have considered the submissions advanced by Mr. Shekawat. I have also perused the material on record. A perusal of the application Exhibit-15 filed by the respondent shows that she clearly stated in paragraph-49 that she is drawing the salary of Rs.46,000/- per month in hand. In other words her gainful employment is not suppressed by her from the Court. In paragraph-24 of the impugned order, the learned trial Judge noted that the respondent draws a gross-salary of Rs.51,201/- and take-home salary is Rs.49,270/- per month. As against this, the gross-salary of the petitioner is Rs.1,05,328/- and take-home salary is Rs.91,660/- per month. The learned trial Judge further observed that both the parties are well placed in their respective jobs. The learned trial Judge, therefore, observed that considering the salary of the petitioner, his standard of living would be much higher than that of the respondent as he is almost earning double than the income of the respondent. The learned trial Judge also considered the fact that the mother is dependent on the petitioner as also his personal expenses.

5. During the course of hearing, Mr. Shekhawat submitted that unfortunately in the year 2017, the petitioner's father has expired. Thus the learned trial Judge has considered the salary of both the parties as also the fact that the petitioner has to maintain his mother. The Court

has also considered the personal expenses incurred by the petitioner. Thus all the relevant aspects were considered by the learned trial Judge while passing the impugned order. Mr. Shekhawat has invited my attention to paragraph-3(e) of the Petition showing his expenses of Rs.94,686/- as against the salary of Rs.92,500/-. I do not find any merit in this submission as basically the same was considered by the learned trial Judge in paragraph-24. That apart, it is material to note that the respondent is staying in Hyderabad and the proceedings are filed by the petitioner in Thane Court. Mr. Shekhawat submitted that the respondent filed application for transfer of the proceedings from Thane to Hyderabad, which was rejected. Thus on every date/s, the respondent is required to travel from Hyderabad to Thane by incurring expenditure in that regard. In paragraph-25, the learned trial Judge observed that as regards travelling expenses, the same will be considered at an appropriate time, if the respondent is required to come to come to the Court at Thane from Hyderabad.

6. For the reasons recorded in paragraph-24 of the impugned order, I do not find that the learned trial Judge committed serious error warranting interference at the hands of this Court under Article 227 of the Constitution of India. By the impugned order, the learned trial Judge has directed payment of Rs.10,000/- per month to the respondent

from the date of the order towards her interim maintenance. Application Exhibit-15 was made on 22.8.2017. Instead of awarding maintenance from the date of application, the learned trial Judge has awarded maintenance from the date of the order. In view thereof also no case is made out for interfering with the impugned order. Hence Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the main proceedings. If such an application is made, the learned trial Judge will pass appropriate order thereon. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)