

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.11469 OF 2018

Atul Shantilal Gada	]	Petitioner
Vs.		
Darshana Atul Gada	]	Respondent

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Mr. Dilip Bagwe i/b Kantilal Kanojia, for Petitioner.
Ms. Firdaus Moosa i/b Prakash Mahadik, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 22nd OCTOBER, 2018.

P.C.

Heard Mr. Bagwe, learned Counsel for the petitioner and Ms. Moosa, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/husband has challenged the judgment and order dated 2nd August, 2018 passed by the learned Judge, Family Court No.4 at Bandra, Mumbai below Exhibit 6 in Petition No.-A-2150 of 2015. By that order, the learned trial Judge partly allowed the application made by the respondent/wife under section 24 of the Hindu Marriage Act, 1955 (for short 'Act') in the following terms;

- “2. The respondent is directed to pay interim maintenance at the rate of Rs.60,000/- (Rupees Sixty thousand only) per month for the petitioner from the date of application i.e 28.07.2015 till the final decision of the petition.
3. If any payment is made as per the order of Hon'ble High Court, Bombay in Writ Petition No.3978/2018 dated 28.06.2018 as ad-hoc interim maintenance shall be adjusted in the arrears of interim maintenance, if any.
4. The respondent is directed to pay deposit of Rs. 2,00,000/- (Rupees Two lakh only) and rent of Rs.

30,000/- (Rupees Thirty Thousand only) per month to the petitioner for acquiring 1BHK flat on rental basis in Vile Parle (W), Mumbai.

5. The petitioner is directed to produce in the Court the registered leave and licence agreement within a period of two months after making payment of the said amount by the respondent.
6. If petitioner fails to produce the registered leave and licence agreement about the said rental premises then the deposit amount shall be returned back to the respondent by her and the order of rent shall automatically stand cancelled.
7. No order as to costs.”

3. In support of this Petition, Mr. Bagwe invited my attention to section 24 of the Act, which reads thus;

“24. Maintenance *pendente lite* and expenses of proceedings.Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable:

⁵¹ [Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]”

He submitted that having regard to the petitioner's own income and income of the respondent, the Court is empowered to direct payment of expenses of the proceedings as also monthly maintenance. The Court is empowered to award reasonable compensation. In the present case, the learned trial Judge has not followed the principles laid down in section 24 of the Act.

4. Mr. Bagwe submitted that the marriage between the parties was solemnized on 26th January, 1996. On 2nd May, 2001, from the said marriage daughter Milloni was born. Initially, the petitioner and the respondent were staying along with his parents in the rented premises situate at Parel. As daughter was studying in a School situate at Vile Parle (West), sometime in June/July, 2006, the petitioner purchased a three bedroom, hall, kitchen flat at Vile-Parle after obtaining loan from his parents as also from his father-in-law. A flat is purchased in the joint name of the parties. He contended that the respondent is having an extra marital affair with P.T instructor employed in the School namely Poddar School, Santacruz (West) where daughter Milloni was subsequently admitted. On 10th November, 2014, the respondent left matrimonial home to stay with her parents. On 27th November, 2014, the respondent lodged F.I.R against the petitioner and his parents at Juhu Police Station. It is material to note that between 1996 and filing of the complaint on 27th November, 2014, there was not a single complaint against the petitioner and his parents. For the first time on 27th November, 2014, the respondent had lodged complaint against the petitioner and his parents. When she left matrimonial home on 10th November, 2014, she did not accompany Milloni. After about one month, i.e on 29th December, 2014, the respondent whisked away daughter Milloni with her without the knowledge and consent of the petitioner. Respondent thereafter lodged further F.I.Rs against the petitioner at Juhu Police Station from 29th December, 2014 to 9th July, 2015. In the meantime on 30th December, 2014, custody Petition was instituted by the respondent. On 20th January, 2015, consent terms were arrived at between the parties regulating access of the daughter. The petitioner also agreed to pay Rs. 10,000/- per month towards maintenance of the daughter as also payment of School fees, tuition fees and medical expenses of the daughter. He submitted that on 26th January, 2015, the parties celebrated wedding ceremony. In March 2015, the respondent also attended engagement of petitioner's cousin. Thus,

everything was going on smoothly between the parties. However, on 20th July, 2015, the respondent instituted Petition seeking divorce on the ground of cruelty.

5. Mr. Bagwe invited my attention to the profit and loss account of the petitioner for the years ending on;

[1] 31st March, 2010

[2] 31st March, 2011

[3] 31st March, 2012 etc.

He submitted that instead of considering income tax returns right from 2010 to 2018 produced before the learned trial Judge, the learned trial Judge considered only bank statement pertaining to one financial year 2014-2015. He further submitted that the petitioner had paid Rs. 11,00,000/- in this Court in pursuance of order dated 19th April, 2018 and further Rs. 1,00,000/- in the Family Court. Thus, in all, the petitioner had paid Rs.12,00,000/- to the respondent. He invited my attention to the entry of 2nd May, 2018 at 13:26:26 showing that his uncle Premji Ghelabhai Shah deposited amount of Rs. 11,00,000/- in his account with Saraswat Bank, Vile Parle (West) through RTGS. On the same day i.e on 2nd May, 2018, at 13:35:07, the petitioner issued demand draft in favour of the Registrar, High Court, Appellate Side for Rs.11,02,596.00 (Rs. 2596/- being commission and other charges of the Bank). He further submitted that the petitioner has paid Rs. 11,00,000/- towards maintenance. Thus, the petitioner has paid in all Rs. 23,00,000/- approximately.

6. Mr. Bagwe has taken me through the additional affidavit dated 12th July, 2018 filed by the petitioner to contend that the petitioner has explained various entries recorded in the statement of account maintained in Saraswat Bank, Vile Parle (West) Branch. The learned trial Judge, however,

relied on one financial year and held that he is liable to pay maintenance @ 60,000/- per month to the respondent from the date of the application i.e 28th July, 2015 till final decision of the Petition as also directed to deposit Rs. 2,00,000/- and rent of Rs. 30,000/- per month to the respondent for acquiring one B.H.K flat on rental basis in Vile Parle (W). He submitted that the petitioner has no capacity of whatsoever nature to comply the impugned order. Whatever amounts he has paid towards maintenance are after obtaining loan from the relatives.

7. Mr. Bagwe relied on following decisions;

- [1] **Manish Jain Vs. Akanksha Jain, AIR 2017 SC 1640** and in particular paragraph 16 thereof.

He submitted that in the case before the Apex Court, the appellant/husband was well placed. As against this, in the present case, the petitioner/husband is not so well placed and therefore, it is impossible for him to comply the impugned order.

- [2] **Vinod Durelal Mehta Vs. Kanak Vinod Mehta, AIR 1990 Bombay 120** and in particular paragraph 5 thereof,

- [3] **Anita Anand Tambe Vs. State of Maharashtra, 2007 (2) Bom. C.R. (Cri.) 227** and in particular paragraph 10 thereof to contend that the assessment orders are the perfect proof of the income. While passing the impugned order, the learned trial Judge has ignored the assessment orders as also profit and loss account submitted by the petitioner.

He, therefore, submitted that the Petition requires consideration.

8. On the other hand, Ms. Moosa supported the impugned order. She invited my attention to the written statement filed by the petitioner while opposing the Petition for divorce filed by the respondent and in particular paragraph 20 thereof. In paragraph 20, the petitioner contended that the respondent herein is a housewife. She also invited my attention to paragraph 50 of the Petition filed by the respondent where she has referred to life style of the petitioner which is not denied in the written statement. She submitted that after considering the material on record, the learned trial Judge issued directions to the petitioner. She, therefore, submitted that no case is made out for interfering with the impugned order.

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Earlier, the Family Court had passed order on 3rd February, 2018 in Interim Application No.204 of 2015 filed in Petition No. A-2150 of 2015. By that order, the learned trial Judge partly allowed the application filed by the respondent and directed the petitioner to pay interim maintenance @ Rs. 40,000/- per month from the date of the application i.e from 28th July, 2015 till final disposal of the Petition. The petitioner was directed to continue to pay towards the maintenance and other expenses of the daughter as per clause (3) of the consent terms. Aggrieved by this decision, the petitioner instituted Writ Petition No.3978 of 2018. The respondent instituted Writ Petition No. 4553 of 2018. Both the Petitions were disposed of by common order dated 28th June, 2018. The impugned order was modified in the following terms;

- (a) in so far as clause (2) of the operative part of the impugned order directing Atul to pay maintenance @ Rs. 40,000/- per month to Darshana from the date of application i.e from 28th July, 2015 is concerned, the same shall be treated as ad-interim order.
- (b) in so far as clause 3 of the impugned order is concerned, in view of the statement made by Mr. Bagwe, it is not

- necessary for the trial Court to deal with this aspect.
- (c) the learned trial Judge will decide grant of maintenance to Darshana as also prayer (b) made in the interim application.
- (d) All contentions of the parties are expressly kept open.
- (e) Parties inform that next date of hearing before the learned trial Judge is 12th July, 2018. The learned trial Judge is requested to dispose of interim application within 4 weeks from the date of appearance of the parties.

10. In paragraph 10 of that order, it was observed that the petitioner has produced statement of account maintained with Saraswat Bank, Vile-Parle (West). The said statement shows various entries which requires explanation from the petitioner. On 5th July, 2018, order dated 28th June, 2018 was modified giving liberty to the parties to file additional affidavits explaining their stand. In pursuance thereof, the petitioner filed additional affidavit on 12th July, 2018. A perusal of this affidavit does not even remotely indicate that the petitioner has explained various entries reflected in the account maintained by him with Saraswat Bank, Vile Parle (West) Branch. In fact, a perusal of paragraph 7 of the reply shows that the petitioner had dealt with foreign trips made by him with his family members. The trips taken were;

- (a) Hongkong
- (b) Singapore
- (c) Malasiya
- (d) U.K
- (e) Europe tour

11. Thus, even the petitioner has accepted that various tours were taken together by the petitioner's family. It is, in that context, material to note the averments made in paragraph 50 of the Petition filed by the respondent for divorce. In paragraph 50, the respondent has contended that the petitioner is a interior designer by profession and also the owner of the company named "Atul Gada & Associates". Reference is also made to the various tours taken by the

parties. Mr. Bagwe submitted that the petitioner has denied the averments made in paragraph 50 of Petition for divorce.

12. The petitioner has filed written statement and in paragraph 40 replied paragraph 50 of the Petition thus;

“With reference to para 50 of the petition, the petitioner has given imaginary picture about the income of the respondent. The respondent states that he is an interior Architect and not interior Designer as contended and both the things are different. The respondent further denies the contents as regards the consultation charges charged by him and the nature of project etc as presented by the petitioner. The petitioner has failed and has not explained as to the source of her information as regards the details of the payment received and the source of income and nature of projects undertaken by the respondent. The respondent puts her to strict proof her allegations and contentions.

With further reference to the para under reply relating to the travelling to exotic places in India and staying in 4 or 5 star hotels and the number of trips to different places in India and outside, the respondent states that the petitioner thus admits that she herself has enjoyed all these luxury and all the trips. This itself proves how false her allegations are against the respondent about the various forms of cruelty. The respondent has even purchased a separate car for the Petitioner for her use for which he is paying the installments. However, the petitioner has twisted these facts in the para under reply to suit her convenience”.

A perusal of this reply, *prima facie*, does not indicate that the petitioner has denied various trips taken by the parties and in fact had contended that the petitioner admitted that she herself has enjoyed all these luxuries and all the trips.

13. Thus, after considering the material on record as also financial status of the parties, the learned trial Judge has passed the impugned order. As

noted earlier, though opportunity was given to the petitioner to explain various entries by filing additional affidavit before the learned trial Judge, the petitioner did not avail this opportunity and also did not explain various entries reflected in the account maintained with Saraswant Bank, Vile Parle (West) Branch. The learned trial Judge has also considered the decision of **Manish Jain** (supra) in paragraph 7. The learned trial Judge has considered this aspect in the impugned order from paragraph 9 onwards. Mr. Bagwe submitted that the appellant before the Apex Court was well placed and still the Apex Court reduced the maintenance amount. In my opinion, the said judgment is not applicable to the facts of the present case as financial condition of the petitioner is sound. In so far as decision in the case of **Vinod Durelal Mehta** (supra), is concerned, in paragraph 5, Division Bench observed as under;

“The learned trial Judge has come to the conclusion that the income-tax returns filed by the husband are not conclusive of the true income of the husband and his income has to be assessed in the light of the said other consideration as well. We do not see anything wrong in this approach. As is common knowledge, income-tax returns do not reflect the true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining it in proceedings such as the present one”.

14. Mr. Bagwe relied on the decision of the learned single Judge in case of **Anita Anand Tambe** (supra) and in particular paragraph 10 thereof where the learned single Judge observed that “the best evidence available, therefore, was the income tax returns. Those income tax returns are filed on record. The learned judge very strangely observed with regard to his returns that normally less income is shown in the Income tax Returns. This is a wrong and unwarranted observation, unnecessarily attributing dishonesty of non applicant. The assessment orders are the perfect proof of the income”. In view of the decision of the Division Bench in **Vinod Mehta's** (supra) case, I do not find any merit in the submission of Mr. Bagwe based upon decision of the

learned Single Judge in **Anita Anand Tambe'** (supra) case. During the course of hearing, I inquired from Mr. Bagwe as to whether the petitioner is ready and willing to deposit the amount as per the impugned order. Upon taking instructions from the petitioner, Mr. Bagwe expressed his inability to deposit the amount.

15. In view thereof and for the reasons recorded in the impugned order, I do not find that any case is made out for interfering with the impugned order by invoking powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]