

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6910 OF 2017

Dr. Sachin Atmaram Wagh ... Petitioner

Versus

Dr. (Mrs.) Shweta Sachin Wagh & Anr. ... Respondents

Shri Niranjana Mogre I/by Shri Ravi Girish Shinde for Petitioner.
Mrs. Chetana Anil Agrawal I/by Mr. Ajay A. Joshi for Respondent No.1.

CORAM : NITIN W. SAMBRE, J.
DATE : 16th OCTOBER 2018.

P.C.

. The Family Court No.2, Pune vide impugned order dated 27th June 2016 in exercise of powers under Section 24 of the Hindu Marriage Act, 1955 has directed the present Petitioner – husband to pay interim maintenance of Rs.75,000/- per month to the Respondent No.1 and Rs.25,000/- per month to the Respondent No.2 from the date of Application and an amount of Rs.50,000/- towards litigation cost and Rs. 700/- per trip for travel from matrimonial home to Family Court, Pune i.e. traveling allowance and injunction from disturbing peaceful possession of Respondent – wife in the matrimonial house at Splendor Country Building No. C-704, Lohagaon Road, Wagholi, Pune. Hence, this Petition by husband.

2. The facts necessary for deciding the present Petition are as under :

Both the parties to the Petition i.e. Petitioner – husband Dr. Sachin Wagh and Respondent No. 1 – wife Dr. Mrs. Shweta Wagh are highly educated. They got married on 8th January 2013 at Pune. Respondent No.2 Ku. Sara, the daughter born on 23rd January 2014 out of the aforesaid wedlock between the parties.

Since the Petitioner and Respondent No.1 were not getting along well and there was discord in matrimonial relations, on or about 1st August 2015 the Petitioner – husband filed an Application for divorce/judicial separation under Section 13(1) (i-a) of Hindu Marriage Act, 1955.

3. The claim for divorce was resisted by the Respondent No.1 who moved an Application under Section 24 of the said Act seeking relief of maintenance pendente lite and expenses of proceedings for her minor daughter and herself.

4. The said Application came to be allowed by the impugned order. As such, this Petition.

5. The learned Counsel for the Petitioner – husband would

strenuously urge that the learned Judge, Family Court while passing the order impugned has lost sight of the fact that the Respondent No.1 – wife is well educated and is having capacity to earn. According to him, while reaching to a quantum of maintenance of Rs.75,000/- to be paid to Respondent No.1 and Rs.25,000/- to daughter, the Family Court has lost sight of the fact that the father who is a retired person has helped the Petitioner in purchasing the property. According to him, the father of the Petitioner has received difference in house rent allowance from Educational Institution where he was working, difference in amount of gratuity for the period from 2008 to 2016 and as such the said amount was invested in the flat which is purchased at Wagholi and Kharadi with Petitioner.

6. According to the learned Counsel for Petitioner, the income tax returns and accounts maintained speaks of the meager income of the present Petitioner to the tune of around Rs.30,000/-. That being so, the amount of maintenance of Rs.75,000/- is disproportionate. He would try to draw support from the various documents viz – extract of the Accounts of the Petitioner. He would also draw support from the Judgment of Madras High Court in the matter of *Savithri Selvakumar & Ors. V/s Dr. S. Selvakumar decided on 22nd September 2017, reported in LAWS (MAD)-2017-9-46*, particularly paragraph nos. 13, 14, 15 and 16 so as to claim

that there is a vast difference in the scheme and considerations under Section 24 of the Act which provides for maintenance pendente lite and Section 25 i.e. permanent alimony. He would rely on the scope of Section 24 to claim that during the pendency of the Application the amount of interim alimony ordered appears to be is unreasonable and on much higher side. He submits that the aforesaid view of the Madras High Court are affirmed by the Apex Court on 9th January 2018 in Special Leave (C) No. 34249 of 2017. As such he submits that the Petition needs to be allowed.

7. *Per contra*, the learned Counsel for Respondent – wife would urge that the Respondent No.1 has very much established the quantum, source of income, the holdings of the Petitioner so as to demonstrate his actual earning and standard of living. According to her, the observations made by the Family Court, Pune are based on the documentary evidence brought on record and each and every finding including the quantum of income is very much substantiated and justified. As such, the learned Counsel sought rejection of the Petition.

8. Considered rival submissions.

9. At the outset very object and reasons behind incorporating Section 24 in the Hindu Marriage Act which provides for maintenance

pendente lite and expenses of proceedings under the Hindu Marriage Act needs to be appreciated. What is required to be appreciated thereunder is that the Applicant to the proceedings under Section 24 of the Act has no independent income which is sufficient for her or his support. The said section empowers the court to order the other party to pay the expenses of proceedings and monthly maintenance as may appear reasonable during the pendency of the proceedings. The factor that will prevail for deciding the quantum will be the monthly income of the party.

10. So far as the case in hand is concerned, the learned Family Court has considered the income tax return of the present Petitioner for the last three years and his gross income in the assessment year 2015-16 was noticed at Rs.5,16,284/- whereas his gross income in the assessment year 2014-15 so also for the assessment year 2013-14 is shown to Nil. The Court then proceeded to income tax return of father of the Petitioner namely, Atmaram Wagh and upon comparing the entries with that of entries in the account of Petitioner found substantial contradictions. The learned Judge then noticed that even though the income of the Petitioner for 2013-14 and 2014-15 was shown to be zero, the Petitioner was able to purchase flats and set up his clinic namely, Wagh Diagnostic Center, purchase a flat at Kharadi, have two cars and managed to appoint a driver to drive those

cars and was also in a position to pay EMIs of housing loan more than Rs.1,40,000/-. The Family Court also proceeded to consider that Petitioner's father has offered Rs.53,000/- per month out of pension received by him and same was added to the monthly income of the Petitioner which he claims to be Rs.30,000/-. Still it is noticed that the Petitioner was not in a position to explain his capacity to repayment of loan amount by monthly installment of more than Rs.1,40,000/-. The Petitioner was also not in a position to explain his expenses on his day today life and as such proceeded to award maintenance pendente lite.

11. The documents which are produced by the Petitioner in the form of balance sheet, account books etc. are duly appreciated by the Judge and have noticed that the Petitioner is earning substantially. Not only this, the Petitioner has tried to demonstrate through two sale deeds that he has disposed of certain medical instruments, however, it is required to be noted that the Petitioner was not in a position to explain source of his income which demonstrate his capacity to repay the amount of loan by monthly installment of Rs.1,40,000/- and more.

12. In view of above the taxable income reflected in income tax documents cannot be termed to reflecting correct income of the Petitioner. Considering the capacity of Petitioner to repay the amount of loan, it can

be easily inferred that Applicant's tentative/average monthly income is more than Rs.3,00,000/-, as is also required to maintain himself.

13. What is required to be considered at this stage of the proceedings is tentative income of the present Petitioner, his standard of living. The number of properties which the Petitioner had purchased being a Radiologist, the four wheeler vehicles and clinic which is owned by him has rightly prevail over by the learned Judge while passing the order of payment of maintenance.

14. In the matter of *Hemant Ganpat Rao Bhosle V/s Sajidah/Rama Hemant Bhosale and another reported in 2015 SCC OnLine Bom 2567* this Court had observed that the income tax return submitted by the Petitioner cannot be a conclusive proof of income of the Petitioner as same are meant only for the purpose of assessment of taxable income. That being so, while discarding the said evidence leaned Judge of the Family Court was justified and has rightly awarded the maintenance.

15. Apart from above, what is required to be looked into at this stage of the proceedings is only quantum and not the entitlement, once it is demonstrated that the Respondent – wife is not earning.

16. In view of the appreciation of the evidence, once the Family

Court has reached to a conclusion of payment of maintenance at the rate of Rs.75,000/- to the Respondent No.1 – wife, in my opinion, the same is very much justified. The order of the learned Family Court appears to be in tune with the requirement of Section 24 of the Hindu Marriage Act.

17. In my opinion, the Respondent has very much satisfied the ingredients under the said Section and the court below was justified in awarding the maintenance which at this stage does not call for any interference. The appropriate support can be drawn from the Judgment of the Apex Court in the matter of **Amarjit Kaur V/s Harbhajan Singh and Another**¹ qua the considerations under Section 24 of the Act as under :

“8. Section 24 of the Hindu Marriage Act, 1955 empowers the court in any proceeding under the Act, if 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 anyone of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent. Once the High Court in this case has come to the conclusion that the appellant wife herein has to be provided with the litigation expenses and monthly maintenance, it is beyond comprehension as to how, dehors the criteria laid down

1 (2003) 10 Supreme Court Cases 228

in the statutory provision itself, the Court could have thought of imposing an extraneous condition, with a default clause which is likely to defeat the very claim which has been sustained by the Court itself. Considerations as to the ultimate outcome of the main proceeding after regular trial would be wholly alien to assess the need or necessity for awarding interim maintenance, as long as the marriage, the dissolution of which has been sought, cannot be disputed, and the marital relationship of husband and wife subsisted. As noticed earlier, the relevant statutory consideration being only that either of the parties, who was the petitioner in the application under Section 24 of the Act, has no independent income sufficient for her or his support, for the grant of interim maintenance, the same has to be granted and the discretion thereafter left with the court, in our view, is only with reference to reasonableness of the amount that could be awarded and not to impose any condition, which has self-defeating consequence. Therefore, we are unable to approve of the course adopted by the learned Single Judge, in this case.”

18. The Petitioner in his application in categorical terms admitted that the Respondent – wife has no employment and permanent source of income. As such, the inference that could be drawn is respondent No.1 – wife and Respondent No.2 daughter are wholly dependent on the income of the Petitioner. No doubt, the Respondents are residing in a flat owned by

the Petitioner, however, that ipso facto will not dis-entitle the Respondents to claim the relief under Section 24 of the Act.

19. Rather the evidence and pleadings on record speaks of independent income of the Petitioner and that of his father. The Petitioner is Radiologist by profession appears to be having successful and flourishing medical practice. As such, he could invest the income therefrom in the immovable and movable properties.

20. In the present case by virtue of the evidence, it is established that the tentative income of the Petitioner is more than Rs.3,00,000/-. In that view of the matter, the Petitioner, in my opinion, is liable to pay the maintenance as ordered by the learned Family Court. Particularly, having regard to the status of the Petitioner and his capacity to pay maintenance, in the backdrop of the fact that the Respondent – wife has no independent source of income of the maintenance. In view thereof, I hardly noticed any error or irregularities.

21. The Writ Petition fails. Hence the same is dismissed.

(NITIN W. SAMBRE, J.)