

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13248 OF 2018
WITH
CIVIL APPLICATION NO.2483 OF 2018

Sagar Girish Dodia ...Petitioner
vs.
Foram Sagar Dodia ...Respondent

Mr. Prashant Malik a/w. Mr. V.R. Shah, for the Petitioner
Mrs. Foram Sagar Dodia, the Respondent in person.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 27, 2018

ORAL JUDGMENT

. Heard Mr. Prashant Malik, learned counsel for the
Petitioner. Mrs. Foram S. Dodia, the Respondent is present in
person.

2. The Petitioner- husband challenges the order dated 5th
October, 2015 made by the Family Court awarding maintenance of
Rs. 10,000/- p.m to Respondent-wife. The operative portion of the
impugned order reads as follows:

1. The application is allowed as under:
2. The petitioner-husband shall pay maintenance
pendente-lite of Rs. 10,000/- per month to the

respondent-wife.

3. It is made clear that the amount awarded in this proceeding shall be inclusive of order and not in addition to the amount of maintenance awarded to the wife in any other proceedings.
4. The petitioner shall further pay Rs.10,000/- towards litigation expenses to the respondent.

3. Mr. Malik, learned counsel for the Petitioner point out that in the proceeding instituted by the Respondent under the Protection of Women From Domestic Violence Act, 2005 (D.V. Act), the learned Magistrate has directed the Petitioner to pay maintenance of Rs. 10,000/- p.m. The Petitioner has questioned the order of the Magistrate by instituting Revision Application No. 270 of 2017. Mr. Malik placed on record the order dated 19th April, 2017 by which a stay has been granted on the direction issued by the Magistrate subject to the Petitioner's depositing amount of Rs. 1,25,000/- in the saving account in the saving account of the Respondent. Mr. Malik states that this amount of rs. 1,25,000/- has been deposited in the saving account of the Respondent within the time stipulated and therefore the stay is even today in

operation.

4. Mr. Malik submits that the impugned order dated 5th October, 2015 made by the Family Court is almost entirely based upon the order made by the Magistrate under the D.V. Act. He submits that if the order of the Magistrate is stayed by this Court, by an order dated 19th April, 2017, it is only appropriate that the impugned order is also stayed for the present, if not ultimately set aside.

5. Mr. Malik submits that the Respondent is in the habit of making exorbitant demands from the Petitioner. He point out that Respondent instituted proceeding under the D.V. Act in which he applied for the order for maintenance. Thereafter, in the Petition instituted by the Petitioner, Respondent made a claim for maintenance of almost Rs. 40,000/- p.m. He points out that the Respondent even went to the extent of demanding Rs. 1 lac by way of litigation expenses. Mr. Malik submits that this dis-entitles the Respondent to claim maintenance. Hr submits that on the basis of income tax returns which are placed on record the income of the Petitioner is quite meager. On the basis of instructions from the

Petitioner who is present in the Court, Mr. Malik, learned counsel for the Petitioner states that even the present income of the Petitioner is in the range of Rs. 2.65 lakhs p.a. He clarifies that this is the gross income and since the Petitioner has several expenses including expenses towards the maintenance of his aged parents, the Petitioner's actual income is much lesser.

6. Mr. Malik states that there is material on record that Respondent has done a course of beauty parlor and there is an document on record which indicate that the Respondent is earning some income by giving tuition. He submits that it is not the Petitioner's case that Respondent is not liable to pay any maintenance amount at all but he submits that the quantum of maintenance as ordered by the Family Court is excessive and therefore the same warrants interference. He submits that since the Respondent is earning from beauty parlor and by taking tuition, the maintenance amount is required to be reduced. For all these reasons Mr. Malik submits that the impugned order warrants interference.

7. Mrs. Foram Sagar Dodia, the Respondent who appears

in person clarifies that she is not presently getting maintenance of Rs. 20,000/- p.m. but only Rs. 10,000/- p.m. This is because the impugned order states that the amount awarded thereby shall be inclusive of order and not in addition to the amount of maintenance awarded to her in any other proceedings. She however point out that the Petitioner is in arrears of payment of maintenance even at the rate of Rs. 10,000/- p.m. Mrs. Foram Dodia further submits that the amount of maintenance awarded to her is in fact on the lesser side. She desired to point out the arrears in the impugned order but was informed that in the Petition instituted by the Petitioner, she cannot be permitted to challenge the impugned order.

8. Since the award of maintenance by the impugned order is inclusive of the maintenance awarded by the Magistrate in the proceeding under D.V. Act, it cannot be said that there is any serious infirmity in the impugned order. Even otherwise, it is not as if there is any statutory bar for the Applicant to claim maintenance under the D.V. Act and under any other legislation, at least no such statutory bar has been brought to my notice in the present proceeding.

9. There is no merit in the submissions of Mr. Malik that the Respondent is in the habit of making any exorbitant or extortionate demands. The Respondent who appears to be in need of maintenance is only exploring the legal avenues which are available to her. In so far as the income of the Petitioner is concerned, the learned Family Court has taken into consideration the income tax return placed on record by the Petitioner. However, learned Family Court has quite correctly observed that it is settled law that in matrimonial matters income tax return by themselves are not a conclusive proof as regards the husband's income.

10. The Petitioner has now admitted that his actual income is in the range of Rs. 2.65 lakhs p.a. The Petitioner has however stated that this is a gross income. The Petitioner has not been entirely candid to the Court. The Petitioner has not placed on record any documents in relation to the precise employment. In such matters, it is not sufficient to simply allege that the wife who is claiming maintenance has failed to produce any documents in respect of her husband's income. It must be remembered that the relationship between the parties is strained and the wife is

struggling to secure maintenance and it cannot be expected that she has access to the necessary documents of the husband's income. In any case, it is also the duty of the husband to place the true and correct facts before the Court of law and the husband cannot take shelter under the contention that wife has not produced any documents in relation to his income. The inference drawn by the Family Court that the income of the Petitioner is substantially more than what is reflected in the income tax return calls for no interference in the facts and circumstances of the present case.

11. The Family Court has also taken cognizance of the fact that the Petitioner has done a beauty parlor course and that it is possible that she is earning some income on that account. There is also some material on record about tuition which the Respondent might be taking undertaking or in any case has potential to undertaking. However, though these are relevant consideration which have already been taken into consideration by the Family Court, it cannot be said that these consideration dis-entitle the Respondent to claim any maintenance. Ultimately, the Respondent has also to survive. If the Respondent is making efforts to earn

some amount for the purpose of her survival, such efforts cannot be construed as obstacles in her claim for maintenance.

12. The Petitioner has nowhere stated whether his father and mother are wholly dependent upon him. There is material on record that the Petitioner has yet another brother. There are no details with regard to income if any which the parents might have. There are no categorical statement in this regard as well.

13. Therefore on the basis of vaprvе pleas or contentions that the Petitioner is also required to maintain his aged parents, the Petitioner cannot avoid payment of maintenance to the Respondent. Besides, this is not a matter where it can be said that the impugned order is almost entirely based upon the order made by the learned Magistrate in the proceeding under the D.V. Act. The learned Family Court has independently addressed the relevant parameters on the aspect of grant of interim maintenance and the view taken by the Family Court is reasonable and in any case not vitiated by any perversity so as to warrant interference in the exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

14. For the aforesaid reasons there is no case made out to interfere with the impugned order.

15. This Petition is therefore liable to be dismissed and is hereby dismissed.

16. The Petitioner is directed to pay further cost of Rs. 5,000/- to the Respondent.

17. The learned Family Court to ensure that such costs are indeed paid by the Petitioner failing which the Family Court is at liberty to take such proceeding as are permissible under law against the Petitioner.

18. In view of above, the Civil Application is disposed of.

(M. S. SONAK, J.)