

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13776 OF 2018

Purshottam Sidram Samleti

...Petitioner

vs.

Kavita Purshottam Samleti

...Respondent

Mr. Samir Kumbhakoni, for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 10, 2018

P.C.:

. Heard Mr. Samir Kumbhakoni, learned counsel for the
Petitioner.

2. The challenge to the Petition is to order dated 21st
August, 2018 made by the Family Court at Solapur, the operative
portion of which reads thus:

(1) The application Exh-19 is hereby partly allowed.

(2) The Petitioner shall pay an amount of Rs. 3,000/-
p.m to the respondent from 05/05/2018 towards
interim maintenance till final disposal of the present
petition.

(3) The petitioner shall pay an amount of Rs. 5,000/- to the respondent towards legal expenses.

(4) The petitioner shall deposit an amount of interim maintenance, as ordered above, till 15th day of every month, in designated account of respondent.

3. Mr. Kumbhakoni submits that the Petitioner is a godown-keeper earning salary of Rs. 10,000/- p.m. He submits that the Petitioner has to maintain his aged parents. He submits that the Respondent has income of Rs. 4,000/- p.m. He submits that though it was not specifically stated in the reply filed by the Petitioner opposing the application for interim maintenance, the fact is that the Petitioner is solely responsible for maintenance of his aged parents since he has no other brother or sisters. He submits that the Petitioner's father has certain ancestral property which is undivided and which he shares with his four brothers. He submits that there is no income as such from this property. For all these reasons, Mr. Kumbhakoni submits that the award of interim maintenance of Rs. 3,000/- p.m to the wife, is excessive and exorbitant.

4. Upon due consideration of the aforesaid submissions of the learned counsel for the Petitioner and perusal of the material on record, there is no case made out to interfere with the impugned order.

5. The income of the Respondent-wife has been taken by the learned Family Court as Rs. 4,000/- p.m. even though the bank statement produced on record by her indicates receipts of amounts of rs. 2,710/-, 2,736/- and Rs.1,618/-. That apart, the Petitioner in his reply, opposing the application for grant of interim maintenance had nowhere stated that he is solely responsible for maintenance of his aged parents. There is no explanation as to why such relevant fact was never been pleaded at the earliest instance. Besides, there is admission that the Petitioner's father is co-owner in respect of the property at Daji Peth.

6. The Respondent has made allegation that the Petitioner has sold his factory and earned amount of Rs. 80 to 90 lakhs on account of such sale. The Respondent has also averred that the Petitioner is having canteen and earns Rs. 30,000/- to 35,000/- p.m.. The averments show that there is landed property of the Petitioner from which the Petitioner is earning some rent. The Petitioner has merely denied all these aspects but failed to place on

record any particulars in this regard.

7. Mr. Kumbhakoni, the learned counsel for the Petitioner submits that the burden is on the wife to produce material and since the same has not been produced, no cognizance can be taken. This is correct. But at the same time it is also correct that a wife who is struggling to receive maintenance cannot be expected to produce documentary evidence at the interim stage. There is also a corresponding duty upon the husband to disclose all particulars regards his true financial status. These particulars does not appear to have been disclosed in the present case.

8. The Family Court has also not taken into consideration the allegations in relation to the sale of the factory, canteen or rental. However, even going by the basis that the Petitioner's income is admittedly Rs. 10,000/- p.m, the award of Rs. 3,000/- p.m. by way of interim maintenance can neither be said to be excessive nor exorbitant.

9. There is no case made out to interfere with the impugned order.

10. Accordingly, this Petition is dismissed.

11. There shall be no order as to the costs.

(M. S. SONAK, J.)