

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2889 OF 2018

Anil Ambaji Shitkar	...	Petitioner
Vs.		
Asawari Anil Shitkar	...	Respondent

Mr. Pradip Chavan i/b. Pradip Chavan & Asso. for Petitioner.
Mr. Rajaram P. Lote for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 25, 2018

P.C. :

Heard Mr. Chavan, learned Counsel for petitioner and Mr. Lote, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner-husband has challenged the judgment and order dated 03.10.2016 passed by the learned Judge, Family Court, Thane below exhibit-18 in Petition No.A-162 of 2015. By that order, the learned trial Judge directed the petitioner to pay Rs.20,000/- to the respondent-wife and Rs.10,000/- each to daughter Kimaya and son Shaunaq per month, in all Rs.40,000/-, from the date of the application till disposal of the main proceedings. Rule. Mr. Lote waives service for respondent. In view of the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. Mr. Chavan has invited my attention to the application at exhibit-18 dated 16.09.2015 filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act'). He invited my attention to paragraph 6 of that application where respondent claimed that she is working in a private company and earns Rs.4,000/- to 5,000/- per month. As against this, he submitted that respondent is having

qualification of M.Com. M.B.A. (H.R.) and is working as Sales Executive with Automotive Manufacturers Private Limited. However, the said fact was not disclosed by her in application exhibit-18.

4. Mr. Lote has tendered copy of the appointment letter dated 15.05.2015 issued by Automotive Manufacturers Private Limited appointing respondent as a Consultant wherein it is mentioned that she would be paid Rs.16,000/- per month as consultancy fees. Mr. Lote submits that in paragraphs 5 and 6 of the impugned order, the learned trial Judge has considered the income of the petitioner and respondent respectively. The learned trial Judge observed that the petitioner did not produce any documentary evidence to substantiate income of the respondent. Mr. Lote, upon taking instructions from the respondent, who is present in the Court, submits that by consent of the parties, order awarding maintenance to the respondent may be set aside thereby directing the trial Court to decide this aspect afresh.

5. Now it is not in dispute that respondent is working with Automotive Manufacturers Private Limited as a Consultant with effect from 15.05.2015 and the said document was not before the trial Court. In view thereof, the order of maintenance to the extent of the respondent-wife is required to be set aside thereby directing the trial Court to reconsider the issue of maintenance of respondent-wife from the date of her application.

6. Mr. Chavan submits that he is not challenging the award of maintenance to the children and assures that within one month from today, he will clear the arrears towards maintenance of the children.

7. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. The order awarding maintenance to the respondent-wife @ Rs.20,000/- per month is set aside;

- b. The order awarding maintenance to daughter Kimaya and son Shaunaq @ Rs.10,000/- per month, each, is upheld;
- c. Petitioner shall clear the arrears of maintenance of the children as awarded by the Family Court as also by the 10th Joint Judicial Magistrate First Class, Vashi, Navi Mumbai vide order dated 14.12.2017 in proceedings under Section 125 of Cr.P.C., by paying amount to the respondent directly, within one month from today subject to the respondent furnishing her Account details within one week from today;

Mr. Chavan states that petitioner has filed application before the learned Magistrate for modification of the order dated 14.12.2017 and the same is pending. He assures that within one week from today, he will file *Purshis* for not pressing that application in respect of award of maintenance to the children. If such *Purshis* is filed, the learned Magistrate will record that petitioner is not pressing application for modification in respect of award of maintenance to the children. The learned Magistrate will proceed with the application in so far as modification of the order qua respondent-wife is concerned.

- d. The learned Counsel for the parties agree that they will appear before the Family Court on 09.05.2018 for fresh hearing qua maintenance of respondent-wife, and for that purpose, no fresh notice be issued to them. The learned trial Judge shall fix the suitable date of hearing and is requested to dispose of that application within 4 weeks from fixing the date of hearing;
- e. All contentions of the parties on merits are expressly kept open.
- f. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)