

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13256 OF 2018

Karan Singh .. Petitioner
Versus
Nitasha Karan Singh .. Respondents

Ms. Seema Sarnaik for petitioner

CORAM : M.S.SONAK, J.

DATE : 26th November 2018.

ORAL JUDGEMENT:-

Heard Ms. Sarnaik learned Counsel for petitioner. The challenge in this petition is to the order dated 21st September 2018 by which the learned family court has directed the petitioner to pay to the respondent interim maintenance at the rate of Rs.20,000/- per month.

2] Ms. Sarnaik, learned Counsel for the petitioner refers to the written statement/ reply filed by the petitioner before the learned family court. She has pointed out that in the written statement/ reply filed it is clearly stated that most of the properties which the respondent alleges as belonging to the petitioner, in fact,

do not belong to the petitioner. She points out that insofar as the flat in Kailash Manas Apartment building is concerned, the same was purchased by the petitioner from the funds loaned partly by his father, his uncle and his mother.

3] Ms. Sarnaik further points out that on 18th April 2016, the petitioner has sold his flat and from and out of the sale proceeds, he has repaid the loan to his father, uncle and mother. She further pointed out that the income tax returns on record pertain to the stage/ period when the petitioner's business was booming. However, she further points out that the petitioner's income has drastically reduced to Rs.26,467/- per month. Ms. Sarnaik points out that the petitioner is unemployed and this income is only through the investment made in mutual funds.

4] Ms. Sarnaik further pointed out that the respondent is herself well qualified and in a business of real estate agency. She pointed out that the income of respondent is in the range of Rs.1 lakh per month. Ms. Sarnaik submits that since the impugned order is made without taking into consideration of these factors the same

warrants interference.

5] Upon due consideration of the contentions raised on behalf of the petitioner and on perusing the record, as well as the impugned order, according to me it is not a fit case to warrant interference in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

6] In the first place, learned family court has only determined the interim maintenance that is payable. Secondly, at this stage atleast the income tax returns which are placed on record cannot be ignored. In terms of income tax returns, the average income of the petitioner even on a conservative basis comes to Rs.60,000/- per month. The respondent has given a long list of moveables and immovable properties, which according to the respondent, are owned by the petitioner. The petitioner has explained that this properties belong to either his brother or parent or his relatives. The properties include immovables and moveables, such as flats, industrial establishments, luxury cars etc. The issue as to whether these properties are infact owned by the petitioner or

not will have to be gone into at the stage of determination of final maintenance amount. Strictly speaking, at this prima facie stage, taking into consideration all these circumstances, including in particular, the income tax returns of the petitioner, it cannot be said that there is any infirmity in the award of interim maintenance of Rs.20,000/- in favour of respondent.

7] From a perusal of the impugned order, it is not as if learned family court has ignored the earning potentiality of the respondent. It is only after taking into consideration these factors that the learned family court has awarded interim maintenance to respondent of only Rs.20,000/- per month when in fact her claim was for maintenance of Rs.2 lakhs per month. Besides, the family court has not awarded the respondent the amount of Rs.75,000/- towards the residence.

8] Therefore, taking into consideration of the aforesaid facts and circumstances, it cannot be said that the impugned order awarding interim maintenance is in excess of jurisdiction or is otherwise vitiated by any perversity.

9] Accordingly, the present petition is dismissed. There shall be no order as to costs.

10] However, it is made clear that the observations in the impugned order or for that matter the present order are only prima facie and, therefore, such observations need not influence the trial judge while deciding the maintenance application finally.

(M.S.SONAK, J.)