

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11890 OF 2016

Mr. Prakash Anant Potdar

...Petitioner

Versus

The State Of Maharashtra
And Anr.

...Respondents

....

Mr. Imtiyaz A. Ismailsha Patel, Advocate for the Petitioner.

Ms.Kavita Solunke, AGP, for Respondent No.1-State.

....

CORAM : R. G. KETKAR, J.

DATE : 05th JULY, 2018

P.C.

1. Heard Mr. Imtiyaz Patel, learned counsel for the petitioner and Ms. Kavita Solunke, learned AGP for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the order dated 12.2.2015 passed by the learned Judge, Family Court No.7, Mumbai in Interim Application No.221/2013 in Petition No.A-1996/2012. By that order, the learned trial Judge partly allowed the application for grant of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 (for short, 'Act'), respondent No.2-wife claimed maintenance for herself and her minor children @ Rs.10,000/- for children and Rs.5,000/- for herself. By the impugned order, the learned trial Judge directed the

petitioner to pay monthly maintenance @ Rs.4000/- per month for wife and Rs.3,000/- per month each for children from the date of application i.e. 11.9.2013 till disposal of the petition. The petitioner is further directed to pay all the educational expenses of children from the date of the order till disposal of the petition after production of valid receipts by the second respondent. The petitioner is also directed to pay costs of Rs.5,000/- to the respondent-husband.

3. In support of this Petition, Mr. Patel strenuously contended that the petitioner has met with serious road accident and his legs are amputated. He has invited my attention to the findings recorded by the learned trial Judge in paragraphs-6 to 8. In paragraph-7, the learned trial Judge observed that the amount of Rs.36,000/- is deducted towards repayment of loan, GPF, GIS etc. and he is getting salary of Rs.19,495/-. He submitted that having regard to the fact that the petitioner has to maintain his mother as also medical expenses, the maintenance awarded by the learned trial Judge is exorbitant. Apart from that, the learned trial Judge failed to consider that respondent No.2 is gainfully employed. In any case, respondent No.2 is, therefore, not entitled to claim maintenance. Mr. Patel, on instructions, states that the petitioner has paid maintenance as per the impugned order and is not in arrears.

4. I have considered the submissions advanced by Mr. Patel. I have also perused the material on record. In paragraph-6, the learned trial Judge observed that though the petitioner alleged that respondent No.2 is working, he did not file the documentary evidence to substantiate his case. The respondent is educated upto 9th standard. In paragraph-7, the learned trial Judge noted that the salary slip of the petitioner shows that his salary is Rs.55,561/-. The learned trial Judge noted that the fact that the petitioner met with serious accident. The learned trial Judge observed that though the petitioner met with an accident, his earning capacity is not affected. In paragraph-8, the learned trial Judge also noted that mother is dependent on the petitioner and he is spending some amount towards her maintenance.

5. After considering the entire material on record, the learned trial Judge accordingly fixed the maintenance as indicated hereinabove. In view thereof, I do not find that the learned trial Judge has committed any error. For the reasons recorded in paragraphs-6 to 8, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)