

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 33501 OF 2018

Mr. Sanjay T. Atalatti .. Petitioner
vs.
Ms Anita S. Atalatti .. Respondent

Mr. Bhushan A. Kulkarni for the petitioner.

CORAM : M. S. SONAK, J.
DATE : 28 NOVEMBER 2018.

P.C. :-

1] Heard Mr. Bhushan Kulkarni, the learned counsel for the petitioner.

2] The challenge in this petition is to the order dated 23rd October 2018 below Exhibit -108 in Darkhast Proceeding No. 48 of 2012.

3] The petitioner in his application Exhibit-108 had applied for set off and deduction of Rs.4,98,050/- on the ground that such amount has been paid in excess of the requirements and obligations under the consent decree which is the subject matter of the execution. By the impugned order, it is this application which has been rejected.

4] Mr. Kulkarni, the learned counsel for the petitioner, submits that as per the consent terms/consent decree Flat No.46 at Pashan Road was transferred on the name of their daughter and the condition was that the mother, the daughter and the petitioner would live in that flat. Instead, the mother rented out the said flat in order to occupy some other flat. Mr. Kulkarni submits that therefore the rentals to the tune of Rs.3,60,000/- which were received from the said flat are required to be set off against other amounts due and payable by the petitioner under the consent decree.

5] Mr. Kulkarni further points out that the consent terms/consent decree makes no reference to the payment of mobile phone charges or school auto charges or tuition charges or stationary charges. Despite that, on basis of incorrect representation from the wife, the petitioner was made to pay such charges. In all, the petitioner has paid an excess of Rs.4,98,050/- and this amount is liable to be set off against any other payments which may be due under consent terms/consent decree. Mr. Kulkarni submits that the impugned order incorrectly rejects the application at Exhibit-108 even though, there was no valid defence raised by the wife and no documents or materials were produced by the wife.

6] Upon due consideration of the aforesaid submission and after perusal of the material on record as also the impugned order, there is really no case made out to warrant interference in the exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India.

7] The petitioner, it appears, is bent upon too technical interpretation of the consent decree. The consent decree makes specific reference to telephone charges as well as educational expenses of the daughter. Obviously, this will include mobile phone charges as well as Autorickshaw, stationary, tuition expenses etc.. The petitioner's resistance for payment of such expenses is neither justified nor consistent with the consent decree. Insofar as the issue of flat is concerned, the wife is admitted that the flat was rented out and she and her daughter shifted to another rented flat at Prabhat Road. The reason given was that the daughter was studying in Kalmadi High School at Prabhat Road and therefore, some residence near the School was necessary. The wife is also stated that the rent which was received from the flat at Pashan Road was utilised for the rent of Flat at Prabhat Road. This explanation is reasonable and there is really no error on the part of the learned Family Court in

accepting the same. It is possible that no documentation as such have been produced. However, there is no reason to dispute that the premises at Prabhat Road were taken on rent by the wife. Obviously, there is some responsibility on the part of the petitioner to bear such expenses. Therefore, if the rentals from Pashan Raod Flat were utilized for this purpose, the petitioner cannot insist upon any set off.

8] Accordingly, there is really no case made out to warrant interference with the impugned order. This petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)