

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4015 OF 2019
(Uttam Vasant Sable Vs. Vimal Uttam Sable)

Mr.S.R.Andhale, Advocate for the petitioner.
Mr.K.N.Shermale, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 28/06/2019

PER COURT :

1. The petitioner/husband is aggrieved by the order dated 18/12/2018 passed below application Exh.16 in HMP No.300/2017 by the Trial Court vide which an amount of Rs.4,000/- per month has been granted as interim maintenance. The contention of the petitioner is that he has preferred the said proceedings in which he has sought divorce from the respondent/wife. The couple have 2 children. Both are residing with the applicant.

2. It is contended that the amount granted is exorbitant and is in addition to Rs.1,500/- that have been granted by another Court in the proceedings bearing Misc.Cri.Application No.146/2016 under the Protection of Women from Domestic Violence Act. The said amount has been granted on 12/04/2016. The petitioner is a labourer and is

doing labour work. He has no other source of income. He has no land from which he can earn income from agricultural activities. The amount of Rs.1,500/- granted in the earlier proceedings deserve to be adjusted with the present proceedings and this petition be allowed.

3. It is further submitted that though the respondent may have suffered chronic failure of both the kidneys which is known as a Chronic Renal Failure, she is getting assistance from the State under a scheme which is known as Maintenance Haemodialysis For CRF-Dialysis and supportive therapy (Minimum of 8 dialysis +monthly Dialysis Panel) under the Rajiv Gandhi Jivandayi Aarogya Yojna. This medical assistance was received by her in 2016. Subsequently, she received a similar assistance in 2018 under the Mahatma Jyotiba Phule Jan Aarogya Yojna. She, therefore, does not require any further medical assistance. It is, therefore, prayed that this petition be allowed and the order of granting maintenance be quashed and set aside.

4. Learned Advocate for the respondent/wife submits that after the birth of 2 children and the marriage being more than 10 years old, it was unfortunate that the wife suffered renal failure and lost

both her kidneys. This is a life threatening ailment. In these conditions, instead of the husband being a moral and physical support to the wife, he apparently declined to support her and she had no option but to return back to her parent's home. Had she not so done, she would not have received any medical treatment.

5. He submits that the 7/12 extract of a particular parcel of irrigated land admeasuring about 20 acres at the village of the husband, was produced before the Court. The same was perused by the Court and it was noticed that the name of the father of the petitioner was mentioned as the owner of the said irrigated land.

6. Considering the above, I find that it is morally and socially unacceptable that the moment a wife develops a life threatening disease, the husband should refuse to spend on her treatment under the false plea of being a labourer.

7. Apparently, the petitioner has attempted to mislead the Court below as well as this Court by stating that he is a labourer and he has no source of income. When the couple was residing in the village and the wife was aware that the father of the petitioner owns 20 acres of land which is the source of income, notwithstanding that the

petitioner is yet to receive his share of the immovable property, the fact remains that the petitioner cannot claim to be a labourer and on the said pretext, refuse to spend for the treatment of the wife.

8. In so far as the medical assistance received by the wife from the Government is concerned, the same is a minimum financial assistance received. Such assistance does not cater to super specialty treatment which is available in super specialty hospitals. The wife is permitted such treatment at the Amrutwahini Rural Hospital. It requires no debate that there are no super specialty hospitals established in rural places. She has a total kidney failure.

9. Considering the above, I do not find that the interim maintenance of Rs.4,000/- in addition to Rs.1,500/- granted in another proceedings could be said to be an exorbitant amount. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)