

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 758 OF 2019

Suresh s/o Harichandra Jamdhade,
Age 46 years, Occ. Service in B.S.F
R/o. Mayurpark, D/4 Sai Apartment,
Harsul, Aurangabad, Dist. Aurangabad. ... **Petitioner.**

VERSUS

1. Sangeeta w/o Suresh Jamdhade,
Age 40 years, Occ. Service.
2. Kum. Sakshi d/o Suresh Jamdhade,
Age 15 years, Occ. Education.
3. Kum. Hansika d/o Suresh Jamdhade,
Age 11 years, Occ. Education.
4. Kum. Kanishka d/o Suresh Jamdhade,
Age 07 years, Occ. Education
Respondents No. 2 to 4 are minor
U/g of respondent No. 1- Mother.

All r/o. Plot No. 25/26, Shripad Police
Colony, Jatwada Road, Behind Sahara
Vaibhav, Aurangabad, Dist. Aurangabad. ... **Respondents.**

...

Advocate for the Petitioner : Mr. Jadhav Kailas B.
Advocate for the respondents No. 1 to 4 : Mr. C.V. Thombre.

CORAM : MANGESH S. PATIL, J.

DATE : 20/09/2019

ORAL JUDGMENT :

Heard both the sides. Rule. The rule is made returnable

forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. At the out set the learned advocate for the petitioner on instructions submits that inspite of the prayer clause 'C' in the petition, he is restricting the writ petition only to the extent of impugning the direction of the two Courts below to pay rent to the respondents at the rate of Rs. 6000/- per month.

3. The learned advocate for the petitioner submits that the respondent No. 1 is serving in the Police Department and is drawing salary. H.R.A. of Rs. 2752/- per month is a component of her salary. Without adverting to this fact, the two Courts below have blindly directed him to pay Rs. 6000/- per month towards rent.

4. The learned advocate for the respondents submits that in fact the pay slip of the respondent No. 1 was not brought on record by the petitioner. There are rent receipts to show that the respondents are paying rent of Rs. 6000/- per month. Therefore there was no fault on the part of the two courts below in quantifying the rent at that rate and holding them entitled to receive it.

5. I have carefully gone through the papers. Since the issue is limited to the impugned direction to the petitioner to pay rent at the

rate of Rs. 6000/- per month, the scope of the writ petition is truncated.

6. The respondent No. 1 is serving in the Police Department. Though the salary certificate was purportedly not produced before the Lower Courts, its copy tendered across the Bar reads that House Rent Allowance of Rs. 2752/- is a component of her salary. Simultaneously, there was a record before the two Courts below showing that the respondents have been staying in a rented premises and the rent was at Rs. 6000/- per month. As the respondent No. 1 is already getting some house rent allowance, in my considered view not taking into account that aspect and granting Rs. 6000/- per month as a rent to the respondents would unjustly enrich the respondents. It would be in the fitness of things if the petitioner instead of direction to pay Rs. 6000/- per month is made to pay to the respondents only the difference between actual rent being paid by the respondents and the House Rent Allowance which the respondent No. 1 is getting.

7. The writ petition is accordingly partly allowed.

8. The impugned order directing the petitioner to pay rent to the respondents at the rate of Rs. 6000/- per month is modified and instead the petitioner shall pay to them an amount of Rs. 3250/- per

month. The rest of the directions stand unaltered. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd