

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 650 OF 2018

PRANAV L. SHENDE	...	PETITIONER
Versus		
SNEHAL PRANAV SHENDE	...	RESPONDENT

Mr. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar,
Advocate for the Petitioner.

Mr. M.S. Joshi, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

Date : 6th March, 2019

ORAL ORDER:

I have heard Mr. Kantak, the learned Senior Counsel for the petitioner and Mr. Joshi, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

2. By this petition, the petitioner is challenging the following three orders:

(i) The order dated 10.04.2018, below Exhibit-23, by which the petitioner has been directed to pay interim maintenance of Rs.50,000/- per month to the respondent and the minor child.

(ii) The order dated 30.04.2018, below Exhibit-14, by which the petitioner has been directed to return the

documents and the articles as set out in the list enclosed to the said application.

(iii) The order dated 10.04.2018, below Exhibit-52, by which, limited visitation rights have been granted to the petitioner.

3. Insofar as the order dated 30.04.2018, directing the petitioner to return the articles and educational documents of the respondent, are concerned, it is contended by the learned Senior Counsel for the petitioner that the petitioner is not in possession or custody of any of the articles or the educational documents/certificates. It is submitted that in the absence of acceptable proof of possession of the said documents or articles, the Trial Court could have been directed the petitioner to return the same.

4. I do find that there is considerable force in the submission. A party can be directed to return the articles/educational documents, provided there is acceptable evidence at *prima facie* stage that the party is indeed in possession of the articles/documents. In my considered view, the Court would be slow in passing such orders at interim stage, particularly in the absence of acceptable evidence that the

concerned party is in possession of the documents/articles.

5. Mr. Kantak, the learned Senior Counsel for the petitioner, on instructions, submits that without prejudice to the contention of the petitioner, the petitioner is ready and willing to pay some compensation equivalent to the price of the articles, if it is acceptable to the respondent.

6. I find that it would be open to the respondent to make a proposal in this regard to the petitioner, who can then consider paying the said amount, if acceptable. However, in the circumstances, the impugned order dated 30.04.2018, directing the petitioner to return the articles/documents will have to be set aside.

7. Insofar as the order granting limited visitation rights to the petitioner is concerned, a perusal of the impugned order shows that the Trial Court has passed the said order on the basis of a concession by the respondent. It transpired during the course of the arguments at bar that the petitioner has filed an application for custody of the minor. The learned Senior Counsel for the petitioner submitted that the petitioner shall file appropriate application for interim custody/visitation rights in

the said proceedings and if, such an application is filed, it would be for the learned Trial Court to decide the same on its own merits and in accordance with law. However, till this is done, it would be open to the petitioner to avail of the visitation rights as granted by the impugned order dated 10.04.2018. In such circumstances, I am not inclined to interfere with the said order dated 10.04.2014.

8. This takes me to the material issue about grant of interim maintenance. On hearing the learned Counsel for the parties, it appears that the petitioner is presently serving in Metrohm India Limited as a Territory Manager and his gross salary for the month of November, 2018 is shown to be Rs.46,744/- and the net carry home salary is shown to be Rs.40,283/-.

9. The learned Counsel for the respondent has taken me through the statement of account of the petitioner with ICICI Bank and there were rival contentions whether, the petitioner was in receipt of any other additional income. The learned Trial Court while granting interim maintenance of Rs.50,000/- has taken into consideration certain amounts received by the petitioner from his father. It is not disputed that the father of the

petitioner has since retired. In any event, the income of the father could not have been taken into consideration while deciding the quantum of maintenance. It also transpired during the course of the arguments at bar that the father of the petitioner is getting pension of approximately Rs.15,000/- per month. Thus, strictly speaking, at this stage, it cannot be accepted that the parents of the petitioner are dependent on him.

10. Considering the overall circumstances and the requirements of the respondent and the minor child, who is now aged 5 years and the ability and the capacity of the petitioner, interim maintenance of Rs.20,000/- can be directed to be paid to both, the respondent-wife and the minor child together, from the date of the application. The impugned order granting interim maintenance is modified to that extent. The part of the order granting expenses of proceedings of Rs.1,000/- per hearing is hereby maintained.

11. The learned Trial Court shall proceed to decide the matrimonial petition as expeditiously as possible and preferably within a period of one year from the receipt hereof. Parties to co-operate for time bound disposal of the petition. Liberty to the

parties to apply for modification of the amount of maintenance granted, after a period of six months, if so advised. The amount deposited before this Court alongwith interest, if any, shall be remitted to the Trial Court. The learned Trial Court shall disburse the amount in accordance with the orders passed in the present petition.

C.V. BHADANG, J.

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