

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 889 OF 2019

Mrs. Vijaya Khemji Parab

...Petitioner

Versus

Mr. Khemji Sitaram Parab
and others

...Respondents

....

Mr. Amit S. Kate, Advocate for the Petitioner.

Mr. Ashutosh S. Kale, Advocate for Respondent No.1.

Mr. Mohan Salian i/b. M.G.S. Legal, Advocate for Respondents No.2 to 5.

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CORAM : R. G. KETKAR, J.

DATE : 04th APRIL, 2019

P.C.

1. Heard Mr. Amit Kate, learned counsel for the petitioner, Mr. Ashutosh Kale, learned counsel for respondent No.1 and Mr. Mohan Salian, learned counsel for respondents No.2 to 5, at length.

2. This Petition takes exception to the order dated 4.12.2018 passed by the learned Judge, Family Court No.3, Mumbai in Petition No.C-59/2017 (Exhibit-22). By that order, the learned trial Judge rejected the application made by the petitioner-wife for withholding the respondent No.1-husband's amount or preventing him from withdrawing said amount from his office along with other ancillary reliefs.

3. Rule. Learned counsel for the respective parties waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Mr. Kate submitted that the petitioner has filed application on 9.1.2019 for claiming interim maintenance @ Rs.30,000/- from the respondent. The daughter of the respondent has also filed application for interim maintenance. He states that on 15.4.2019, the Court has fixed the hearing of application for interim maintenance filed by the petitioner and daughter also.

5. The petition was heard on 21.2.2019. The order recorded that on the next date of hearing, subject to hearing both sides the Court will consider setting aside order dated 4.12.2018 passed by the learned trial Judge and directing the trial Court to decide the application Exhibit-22 (petition No.C.59/2017) along with the petitioner's application for interim maintenance dated 9.1.2019 at Exhibit-32A.

6. Mr. Ashutosh Kale, on instructions, submits that the impugned order may be set aside and the learned trial Judge may be directed to decide the application Exhibit-22 (petition No.C.59/2017) along with the petitioner's application for interim maintenance dated 9.1.2019 at Exhibit-32A as also the application filed by the daughter claiming interim maintenance.

7. Mr. Salian has submitted the details of terminal dues of respondent No.1 Khemji S. Parab, which are to the following effect :

The terminal dues of Khemji S. Parab

A	Sr. No.	Payment Particulars	Amount
	1	Gratuity	16,27,701.92
	2	Encashment of leave [Taxable above 3 Lakhs]	6,44,880.00
	3	Refund of GSLI Savings Portion	1,38,627.02
	4	Insurance Benefit	3750
		Total	24,14,958.94
B	Recoveries		
	1	Proportionate Cash Medical Benefit (12/18)	554
	2	LIC Housing Finance Loan (Rs.8,34,954.69+1,46,801.07)	9,81,755.76
	3	Vima Kamgar Loan	7,19,106.00
		Total	17,01,415.76
<u>Net Payment</u> [A – B]		Total of 24,14,958.94 – 17,01,415.76	<u>7,13,543.18</u>

8. Mr. Salian assures that he will give a photo-copy of these calculations to the learned counsel for the parties.

9. In view thereof, the petition is disposed of in the following terms :

- i. The impugned order dated 4.12.2018 below Exhibit-22 (Petition No.C.59/2017) is set aside and Petition No.C-

59/2017 is restored to its original position before the learned trial Judge.

- ii. The learned trial Judge will decide petition No.C.59/2017 along with petitioner's application for interim maintenance dated 9.1.2019 at Exhibit-32A as also application for interim maintenance filed by the daughter of the petitioner after hearing all the parties in accordance with law.
- iii. During pendency of these applications, respondents No.2 to 5 shall not disburse the amount.
- iv. All contentions of the parties on merits are expressly kept open.
- v. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)