

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.11140 OF 2018

WITH

CIVIL APPLICATION [STAMP] NO.2422 OF 2019

Ravindra Netaji Bhujbal	]	Petitioner
Vs.		
Shubhangi Ravindra Bhujbal	]	
@ Shubhangi Arjun Nanavare	]	Respondent

.....
Mr. Vikas Shivarkar, learned Counsel for the Petitioner.

.....
CORAM : R.G. KETKAR, J.

DATE : 28th FEBRUARY, 2019.

P.C.

Heard Mr. Shivarkar, learned Counsel for the petitioner at length.

2. This Petition takes exception to the order dated 29th June, 2018 passed by the learned Judge, Family Court No.2, Pune below Exhibit 51 in P.A. No.1285 of 2017. By that order, the learned Judge allowed application Exhibit 51 made by the respondent under section 24 of the Hindu Marriage Act, 1955 (for short 'Act') and directed the petitioner herein to pay an amount of Rs.5000/- per month each to the respondent and her three children from the date of the application i.e from 28th February, 2018 till disposal of the main Petition.

3. In support of this Petition, Mr. Shivarkar has invited my attention to the Petition filed by the petitioner under section 13 (i-a) of the Act for dissolution of marriage. He submitted that the respondent eloped with one

Rishikesh Jadhav and deserted the petitioner. The petitioner filed P.A No.1047 of 2017 for restitution of conjugal rights. The said proceeding was disposed of in terms of the consent terms dated 13th October, 2017 and the parties agreed to reside together. The respondent again eloped with Rishikesh Jadhav. He submitted that while passing the impugned order, the learned Judge has not considered this aspect.

4. Mr. Shivarkar invited my attention to paragraph 7 of the reply dated 24th April, 2018 opposing application Exhibit 51 where the petitioner has made reference to the assertions made about conduct of the respondent in the Divorce Proceedings. He also invited my attention to the Civil Application for seeking leave to amend the Petition. Along with Civil Application, he has annexed;

- (a) statement dated 26th August, 2018 of the respondent recorded by the Hinjewadi Police Station, Pimpri Chinchwad City;
- (b) order dated 31st August, 2018 passed by the learned Judicial Magistrate First Class, Court Room No.6, Pune in Criminal Misc. Application No.3534 of 2018 issuing search warrant of minor son Adiraj under sections 97 and 98 of the Code of Criminal Procedure, 1973.
- (c) application dated 19th December, 2018 made by the petitioner before learned Judge of the Family Court for handing over custody of minor children to him.

In pursuance thereof, the respondent has handed over custody of three minor children to the petitioner on 6th July, 2018. He, therefore, submitted that in so far as the impugned order awarding maintenance to the wife as also minor children from 28th February, 2018 till disposal of the main Petition is concerned, the same is liable to be set aside.

5. I have considered the submissions advanced by Mr. Shivarkar. I have also perused the material on record. A perusal of the impugned order shows that in paragraphs 15 and 16, the learned Judge has dealt with capacity of the petitioner as also status and life style of the petitioner. The learned Judge noted that the petitioner has not disclosed his true income and, therefore, the Court has to enter into the guess work regarding the income of the petitioner. The learned Judge accordingly came to the conclusion that the respondent (petitioner herein) might be earning more than Rs.60,000/- per month from his assets. After considering the status and position of the parties, reasonable wants of the respondent, income of the petitioner and number of persons dependent upon him, the learned Judge was of the view that granting interim maintenance @ Rs.5,000/- per month each to the respondent and her three children would meet the ends of justice.

6. In so far as contention based upon the Divorce Petition is concerned, a perusal of the impugned order does not reflect that the petitioner has agitated these points before the learned trial Judge. Even in paragraph 7 of the reply dated 24th July, 2018, the petitioner has not made reference to the Divorce petition and in particular the assertions made about conduct of the respondent.

7. In view thereof, it is not possible to examine the contentions raised by the petitioner for the first time in this Court, that too, by allowing application for amendment. If according to the petitioner, these are subsequent developments after passing of the impugned order, he is at liberty to move the trial Court for variation of the impugned order. If such application is made, the same shall be decided by the trial Court on its own merits and in accordance with and un-influenced by the observations made in this order. All contentions of the parties in that regard are expressly kept open.

8. For the reasons recorded in paragraphs 15 and 16 of the impugned order, I do not find that the learned Judge has committed any error while passing the impugned order. Hence, the Petition fails and the same is dismissed. In view of dismissal of C.R.A, C.A (Stamp) No.2422 of 2019 does not survive and as such is disposed of.

9. Mr. Shivarkar submits that the petitioner has deposited Rs.45,000/- in this Court. The said amount shall be transmitted to the Family Court, Pune. The respondent is at liberty to file application for withdrawal of that amount. Order accordingly.

[R.G. KETKAR, J.]