

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 2676 OF 2017

Mr. Rupesh Kailas Khairnar ... Petitioner

V/s.

Mrs. Neha Rupesh Khairnar ... Respondent

Mr. Anil D'souza for the Petitioner.

Mr. Himanshu Nagarkar for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 27th SEPTEMBER 2019.

P.C. :

1. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties, heard finally.

2. Being aggrieved by the order dated 2nd January 2017 passed by the Family Court, Pune thereby granting maintenance to the respondent @ Rs.15,000/-. The petitioner has approached this Court by way of present petition.

3. The learned counsel for the petitioner has drawn the attention of this Court to the fact that the petitioner herein was married to the respondent in the year 2014.

4. The respondent was constrained to approach the Women's Grievance Redressal Committee on 6th June 2015.

5. The qualification of the respondent is Bachelor of Arts (Hindi). In the year 2015 ,the petitioner has filed Petition No. 180 of 2015, seeking divorce. By way of an application the respondent had sought maintenance. It is the contention of the petitioner that the respondent was paying Income Tax Returns for the year 2013-2014 and 2014-2015. It is contended by the learned counsel for the petitioner that the respondent herein had shown her income from business as Rs.2,13,070/- and therefore, she is not entitled for maintenance.

6. The learned counsel has also drawn attention of this Court to the say filed by the respondent, wherein she has specifically stated that she was original resident of Thane. Prior to marriage, her parents had withdrawn Insurance Policies from time to time which was paid by her Father. It is submitted that prior to marriage i.e. 12th December 2014 ,she was working with her mother in a profession of Art and Craft at Thane. Since her mother was 55 years old she could obtain loan and therefore, the respondent who happened to be an unemployed graduate was constrained to take steps to apply for loan.

7. The learned counsel for the respondent submits that the respondent did not apply for loan because the business has been closed. The learned counsel for the petitioner submits that even as per her affidavit her mother who is 55 years old was intending to expand her business. She had shown Income Tax Returns for three years. The respondent also ought to have made similar efforts and although she is

able bodied and graduate she does not do any work and wants to survive upon the income of her husband.

8. The learned counsel has placed implicit reliance upon the Judgment of the single bench of J.G. Chitre Court in the case **Smt. Mamta Jaiswal V/s. Rajesh Jaiswal**, wherein the Court has observed that :-

“...The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not be treated to be aim, goal of Section 24. It is indirectly against healthyness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours....”.

9. This judgment would be of no help to the petitioner in view of the judgment of the Apex Court in the case of **Pratima Devi and Anr. V/s. Anand Prakash**, wherein it is held that :-

A husband/father is duty bound to maintain his wife and child. Unless there are very special reasons, the higher Court should not normally stay such an order.

10. The salary of petitioner at the time when the respondent had filed an application for maintenance was Rs.57,174/-.

11. The Family Court was justified in calculating $\frac{1}{4}$ of the salary for maintenance of the wife and has awarded the sum of Rs. 15,000/-. The said order cannot be interfered with.

12. The salary of the petitioner as on today is about Rs. 70,000/-, the same cannot be considered in the present petition as the challenge in this present petition is to grant of maintenance @ Rs. 15,000/- p.m.

13. In view of the above discussion, the petition being sans merits as rejected.

(SMT. SADHANA S. JADHAV, J)