

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5881 OF 2018

|                           |     |            |
|---------------------------|-----|------------|
| Sandesh Ramchandra Mohite | ... | Petitioner |
| Vs.                       |     |            |
| Swati Sandesh Mohite      | ... | Respondent |

Mr. Noman Ahmed Jafri for Petitioner.  
Ms Shakuntala A. Mudbidri for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : APRIL 4, 2019**

**P.C. :**

Heard Mr. Jafri, learned Counsel for petitioner and Ms Mudbidri, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 04.01.2018 passed by the learned Judge, Family Court No.7, Mumbai below exhibit-12 in Petition No.A-323 of 2017. By that order, the learned trial Judge partly allowed the application made by the respondent-wife under Section 24 of the Hindu Marriage Act, 1955 (for short 'H.M.Act'). The learned trial Judge directed the petitioner to pay Rs.4,000/- per month to each daughter towards their interim maintenance i.e. Rs.8,000/- to the respondent from the date of the application i.e. since 08.05.2017 till disposal of the main Petition.

3. The Petition was heard on 20.07.2018. After hearing the learned Counsel for the petitioner and perusing other relevant documents and the impugned order, this Court issued notice to the respondent-wife subject to the petitioner depositing Rs.50,000/- within a period of three weeks. It was made clear that failure to deposit the amount would automatically

dismiss the Petition without further reference to the Court. Mr.Jafri submitted that petitioner has deposited Rs.50,000/- in the Family Court.

4. In support of this Petition, Mr. Jafri has raised following contentions:

a. The respondent has filed application under Section 24 of the H.M. Act. Under Section 24 of the H.M.Act, the learned trial Judge was not justified in ordering maintenance to the daughters. Under Section 24 of the H.M.Act, maintenance can be awarded either to the wife or to the husband, as the case may be, who has no independent income sufficient for her or his support. In other words, he submitted that the learned trial Judge could have awarded maintenance to the respondent but not to the children. The respondent ought to have moved application under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'H.A.M. Act');

b. The learned trial Judge has fixed the quantum of maintenance on the basis of Income Tax Returns produced for the Assessment Years 2013-2014 to 2015-2016. However, subsequently, the petitioner is retrenched. He submitted that the quantum of maintenance granted by the Family Court may be reduced in terms of prayer clause (b) of the Petition.

5. On the other hand, Ms Mudbidri supported the impugned order. She submitted that in paragraph 9 of the impugned order, the learned trial Judge has considered the income from the salary of the petitioner as also capacity of the petitioner to earn income from other sources, and accordingly, awarded maintenance. She, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. In paragraph 9 of the impugned order, the learned trial Judge has observed thus,

“9. Petitioner has produced his income tax return for the assessment year 2013-2014 to 2015-2016. As per facts of the case, both the parties have separated from November 2015. As per income tax return for the assessment year 2013-2014, petitioner's income from salary was Rs.1,56,396/- and income from other source was Rs.33,334/-, thus his gross total income was Rs.1,89,730/-. As per income tax return for the assessment year 2014-2015, his income from salary was Rs.1,09,320/- and income from other sources was Rs.1,76,062/- and thus gross total income was Rs.2,85,382/-. As per this income tax return, his income from salary at Centaurus Financial Services Pvt. Ltd., was Rs.1,09,320/-, so far as, income from other sources in the said financial year is concerned, which is much more and as per form No.16 issued by Directors his income consists from I.3. Centaurus Financial Services Pvt. Ltd., and Abhishek Vimalchand Jain company. Whereas, in the income tax return for the assessment year 2015-2016, his income from salary was Rs.1,08,000/- and income from other sources was Rs.35,000/-. As per this income tax return, his income from other source, was income from Transmarket Group Research India Pvt. Ltd. It means, in addition to the salary, the petitioner is also having income from other sources.”

7. In paragraph 10, the learned trial Judge noted that both the parties have not produced their income details, such as, recent salary slips or bank statements to prove their respective contentions. Even otherwise, the petitioner-husband is duty bound to maintain his daughters. He cannot shirk his responsibility towards their maintenance. He has to work more and earn more to maintain his daughters. On the basis of the available evidence and documents on record and considering requirements of both the minor daughters towards their maintenance and educational expenses, costs of living, status of both the parties, day-to-day expenses, the learned trial Judge came to the conclusion that interim maintenance @ Rs.4,000/- per month to each daughter would be just and

proper and it would meet the ends of justice.

8. Mr. Jafri submitted that the learned trial Judge was not justified in awarding maintenance in an application filed by the respondent under Section 24 of the H.M.Act. It is no doubt true that the respondent has filed under Section 24 of the H.M.Act. At the same time, it is settled principle of law that the order is not vitiated only because of wrong mentioning of Section / provision of the Statute, if the Court otherwise has power to award maintenance even to the daughters. Certainly the said order can be maintained by treating the application under the provisions of H.A.M. Act. Section 21 of the H.A.M. Act defines expression 'dependants'. Section 21(v) reads thus,

“21. Dependants defined.- For the purposes of this Chapter 'dependants' mean the following relatives of the deceased:-

(v) his or her unmarried daughter, or the unmarried daughter of his pre-deceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;”

9. Section 22 of the H.A.M. Act deals with the maintenance of dependants. Section 23 deals with amount of maintenance. Sub-section (2) thereof lays down that in determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or

from any other source;

- (e) the number of persons entitled to maintenance under this Act.

10. A perusal of paragraph 10 of the impugned order shows that the learned trial Judge has applied the yardstick set out in sub-section (2) of Section 23 of the H.A.M. Act. In view thereof as also for the reasons recorded in paragraph 9 of the impugned order, I do not find any merit in the submission of Mr. Jafri that as respondent has filed application under Section 24 of the H.M.Act, the learned trial Judge was not justified in awarding maintenance to the minor daughters. Having regard to the finding recorded by the learned trial Judge in paragraph 9, no case is made out for granting relief in terms of prayer clause (b) of the Petition. Hence, Petition fails and the same is dismissed. The interim stay granted earlier stands vacated.

11. All parties, including the trial Court, to act upon the authenticated copy of this order.

**(R. G. KETKAR, J.)**

*Minal Parab*