

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10122 OF 2017

Mr. Pravin Ganpati Patil

...Petitioner

Versus

Mrs. Kamal alias Komal Patil

...Respondent

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Mr. N.V. Vechalekar i/b. N.V. Vechalekar & Co. for the Petitioner.

Mr. Chandrashekhar Yadav i/b. Hitesh P. Vyas, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 31st JANUARY, 2019

P.C.

1. Heard Mr. N.V. Vechalekar, learned counsel for the petitioner and Mr.Chandrashekhar Yadav, learned counsel for respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 6.1.2017 passed by the learned Principal Judge, Family Court No.1, Pune below Exhibit-10 in P.A. No.1134/2015. By that order, the learned trial Judge partly allowed the application made by the respondent under Sections 24 and 25 of the Hindu Marriage Act, 1955 (for short, 'Act') and directed the petitioner herein to pay interim maintenance of Rs.10,000/- per month to the respondent for herself and Rs.10,000/- per month for minor daughter Vaishnavi from the date of the application till the decision of the main

petition. The petitioner is further directed to pay Rs.10,000/- to the respondent towards the litigation expenses.

3. In support of this petition, Mr.Vechalekar strenuously contended that the respondent in her application under Section 24 of the Act alleged that the petitioner is working as a Design Engineer in Husco International Joint Venture of JCB, Talegaon Dabhade and getting salary of Rs.50,000/- per month. The respondent, however, did not substantiate said claim by producing any evidence. He submitted that by order dated 6.11.2017, this Court directed the petitioner to produce the latest salary-certificate in this Court. In pursuance thereof, the petitioner has produced the salary-certificate which shows that his net salary is Rs.39,215/- He, therefore, submitted that the interim maintenance awarded by the learned trial Judge is highly excessive and oppressive.

4. Mr. Vechalekar further submitted that the respondent is highly qualified. She is having a qualification of B.Sc. MCM and MPM. She is earning Rs.25,000/- to Rs.30,000/- per month. The respondent is assisting her father in the business which is carried on in the name and style "Varad Enterprises". The learned trial Judge, however, did not consider this aspect while passing the impugned order. He further states that the petitioner has complied the order dated 28.6.2018 by depositing

Rs.5,70,000/- in the trial Court. He, therefore, submits that the petition requires consideration.

5. On the other hand Mr. Yadav submitted that in the impugned order, the learned trial Judge has noted that the petitioner herein did not produce his salary-certificate. He did not produce documentary evidence to show his income. He has taken me through the application filed by the respondent and submitted that after considering the material on record, the learned trial Judge has passed the impugned order. He, 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. As mentioned earlier, the respondent has filed application under Sections 24 and 25 of the Act. In paragraph-2 thereof, it is asserted that after separation since 15.12.2014, the petitioner herein did not pay any single penny to the respondent wife and her minor daughter Vaishnavi towards maintenance. The petitioner is working as a Design Engineer in Husco International Joint Venture of JCB, Talegaon Dabhade and gets salary of Rs.50,000/- per month. The petitioner is owner of a flat at Vishrantwadi, Pune. The petitioner has also invested in shares of various companies and has LIC policies. The

petitioner is also owner of agricultural land at Kolhapur and gets income of Rs.2 Lakh per annum. The total monthly income of the petitioner is Rs.67,000/- per month. The respondent contended that she is jobless and has no independent source of income.

7. The petitioner has filed reply opposing said application. The learned trial Judge, on the basis of the material on record, noted that it is an admitted position that since 15.12.2014 the respondent is staying at her parents' house. The learned trial Judge noted the contention of the petitioner that the respondent is highly qualified person and is working in her father's business and is earning Rs.25,000/- to Rs.30,000/- per month. The respondent did not deny about her educational qualification. She, however, denied that she is working in the business of her father and is earning Rs.25,000/- to Rs.30,000/- per month. The learned trial Judge also noted that there is no documentary evidence on record about income of the respondent. On the other hand, it has come on record that the petitioner is working as a Design Engineer in Husco International Joint Venture of JCB, Talegaon Dabhade. He did not produce his salary-certificate on record. After taking into consideration the fact that the petitioner has agricultural land and is getting income from the agricultural land as also he is owner of one flat at Vishrantwadi, Pune as also having regard to the standard

of living of the parties, the learned trial Judge held that the respondent is entitled to Rs.10,000/- per month for herself and Rs.10,000/- per month for her minor daughter Vaishnavi.

8. Mr. Vechalekar submitted that in pursuance of the order dated 6.11.2017 passed by this Court, the petitioner has produced the salary-certificate which shows his monthly net salary is Rs.39,215/- per month. However, he could not give any explanation for not producing said salary-certificate before the trial Court. As noted earlier, the learned trial Judge has specifically recorded a finding that the petitioner has not produced the salary-certificate on record. In view thereof, it is not possible to test the correctness of the impugned order on the basis of document which was not produced before the trial Court. In view thereof, no case is made out for interfering with the impugned order. Hence, petition fails and the same is dismissed. However, liberty is reserved to the petitioner to move the trial Court by producing the salary-certificate. If such an application is made, the same shall be decided by the trial Court on its own merits and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)