

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6556 OF 2018

Anwar Ali Abdul Rashid Ali Sabri

...Petitioner

Versus

Tamanna Anwar Ali
and others

...Respondents

**With
Civil Application No.1859 of 2018
In
Writ Petition NO. 6556 OF 2018**

....

Ms. Manasi S. Bane, Advocate for the Petitioner.

Ms. Shraddha Vavhal i/b. Maharashtra Legal Associates, for the Respondents/Applicants in CAW/1859/2018.

....

CORAM : R. G. KETKAR, J.

DATE : 28th FEBRUARY, 2019

P.C.

1. Heard Ms. Manasi Bane, learned counsel for the petitioner and Ms. Shraddha Vavhal, learned counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 6.3.2017 passed by the learned Judge, Family Court No.2, Pune in Petition E. No.185/2015. By that order, the learned Judge allowed the petition filed by the respondents herein and directed the petitioner to pay maintenance of Rs.5,000/- per month to the first respondent,

Rs.3,000/- per month each to the respondents No.2 to 4 (in all Rs.14,000/- per month) under Section 125 of the Code of Criminal Procedure, 1973 from the date of application.

3. The petition was heard on 18.6.2018. Ms.Bane, on instructions, from the petitioner who was present in the Court stated that as on date of passing of the order, the petitioner was in arrears of Rs.1,68,000/-. She assured that on or before 22.6.2018 she will deposit the demand drafts of Rs.1,68,000/- in this Court. In view thereof, subject to the petitioner depositing Rs.1,68,000/- in this Court on or before 22.6.2018, ad-interim order in terms of prayer clause (c) was granted till next date and the petition was adjourned to 28.6.2018.

4. Ms. Bane states that the petitioner has complied the order by depositing Rs.1,68,000/- in this Court. By order dated 10.10.2018 passed in Civil Application No.1859/2018 the first respondent was permitted to withdraw an amount of Rs.50,000/- in her maiden name. Ms. Vavhal confirms that respondent No.1 has received an amount of Rs.50,000/-. In view thereof, the remaining amount deposited by the petitioner in this Court is Rs.1,18,000/-.

5. Rule. Ms. Vavhal waives 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.

6. One of the contentions advanced by Ms.Bane was that the petitioner was not served with the proceedings. She invited my attention to paragraph-3 of the impugned order wherein it was observed thus :

“3. The summons could not be served by ordinary summons, so paper publication was made. The newspaper is produced on record along with list of documents at Exh. 17. Respondent did not appear, so matter proceeded exparte.”

7. In view thereof it was suggested to the learned Counsel for the parties that the impugned order will be treated as ad-interim order and the petition will be restored for deciding it afresh by giving opportunity to the petitioner of filing reply. It was made clear that the respondents will be permitted to withdraw remaining amount of Rs.1,18,000/- deposited by the petitioner in this Court and said withdrawal shall be subject to further orders that may be passed in petition under Section 125 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The petitioner will go on paying maintenance @ Rs.5,000/- per month to respondent No.1 and Rs.3,000/- per month each to respondents No.2 to 4 under Section 125 of Cr.P.C. as and by way of ad-interim arrangement during pendency of the proceedings.

8. Ms. Bane states that the petitioner is present in the Court today. She has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked 'X' for identification. Upon taking instructions from

him, Ms. Bane submits that she is agreeable to the suggestion. She further states that within four weeks from today, the petitioner will file reply to the petition filed by the respondents under Section 125 of Cr.P.C. and serve copy thereof during that period on the other side.

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

- i. Impugned order dated 6.3.2017 passed by the learned trial Judge is set aside. Petition E. No.185/2015 is restored to the file of the trial Court to its original position. The petitioner shall file reply to the petition within four weeks from today and serve copy on the other side during this period.
- ii. During pendency of the Petition E. No.185/2015 and without prejudice to the rights and contentions of the petitioner, he will go on paying Rs.5,000/- per month to the first respondent and Rs.3,000/- per month each to respondents No.2 to 4 under Section 125 of Cr.P.C. as ad-interim maintenance.
- iii. The learned trial Judge will decide the proceeding on its own merits and in accordance with law and on the basis of material on record and uninfluenced by fixation of this ad-interim maintenance by this Court.
- iv. All contentions of the parties are expressly kept open.
- v. The first respondent is permitted to withdraw the amount of

Rs.1,18,000/- deposited by the petitioner in this Court. It is made clear that said withdrawal shall be subject to further orders that may be passed by the trial Court in petition under Section 125 of Cr.P.C. Registry to transmit the amount of Rs.1,18,000/- to the first respondent through Electronic Clearing Service (ECS). Bank details of the first respondent, standing in her maiden name, are as under :

Name	: Tamanna Inam Baksh Siddiqui
Bank & Branch	: Allahabad Bank, Dhanori Branch, having address : Survey No.55/3, Bhairavnagar, Near Matoshri Karyalaya, Dhanori Road, Dhanori, Pune – 411 015
Branch Code	: 3480
A/c. No.	: 59087355615
Type of A/c.	: Savings Account
IFSC Code	: ALLA0213480
MICR Number	: 411010009

- vi. Rule is made absolute in aforesaid terms with no order as to costs.
- vii. In view of disposal of the main petition, Civil Application No.1859/2018 filed by the respondents does not survive and the same is disposed of.
- viii. Order accordingly.

(R. G. KETKAR, J.)