

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.10570 OF 2017

Anagha Dhananjay Mokashi	]	Petitioner
Vs.		
Dhananjay Dattatray Mokashi	]	Respondent

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Mr. Sagar A. Joshi, learned Counsel for the Petitioner.
Mr. Huded Ratankumar Bhimrao and Madhav V. Chavan, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 28th FEBRUARY, 2019.

P.C.

Heard Mr. Joshi, learned Counsel for the petitioner and Mr. Huded, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 20th May, 2017 passed by the learned Judge, Family Court, Thane below Exhibit 17 in Petition No. A-445 of 2016. By that order, the learned Judge partly allowed the application made by the respondent under section 24 of the Hindu Marriage Act, 1955 (for short 'Act'). The respondent filed application claiming interim maintenance for herself and minor son Mihir and for travelling allowances. The learned Judge directed the respondent herein to pay Rs.6,000/- per month to the respondent towards maintenance of minor son Mihir from the date of the application till further orders on or before 10th day of each month as per English Calender. The respondent was directed to clear all the arrears in 10 equal installments.

3. Rule. Mr. Huded waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. Mr. Joshi submitted that the petitioner is present in the Court. He has tendered photo copy of her Aadhar Card, which is taken on record and marked 'X' for identification. Upon taking instructions from her, he states that at this stage, the petitioner is not claiming maintenance for herself and she is pressing for enhancement in interim maintenance awarded to minor son Mihir. Statement made on instructions by Mr. Joshi is recorded.

5. Mr. Joshi has invited my attention to the findings recorded by the learned Judge in paragraphs 7 to 13. He submitted that the respondent vide reply dated 14th July, 2015 (Exhibit E, pages 113 to 122) opposed application Exhibit -17 filed by the petitioner for interim maintenance. He has invited my attention to paragraph 11 where the respondent claimed deduction of the monthly expenses as under;

	Net Cash in hand	-	Rs.75,000/-
[1]	EMI for the flat at Wakad	-	Rs.21,682/-.
[2]	Medical expenses of respondent's father	-	Rs.7,000/-
[3]	Expenses for treatment of respondent's mother.	-	Rs.6,000/-
[4]	Expenses for medicines and maintenance of respondent's grandmother (mother's mother)	-	Rs.7,000/-
[5]	Society maintenance per month	-	Rs.2000/-
[6]	Diabetic medical treatment and expenses over medicines of the respondent	-	Rs.9,000/-
[7]	Household expenses	-	Rs.15,000/-

He submitted that in paragraph 12 of the impugned order, the learned Judge accepted the deductions claimed by the respondent and accordingly awarded maintenance. He submitted that the learned Judge was not justified in blindly accepting the deductions claimed by the respondent. In short, he submitted that the learned trial Judge without application of mind has awarded maintenance @ Rs.6,000/- per month towards maintenance of minor son Mihir. He, therefore, submitted that maintenance awarded to the minor son, Mihir requires to be enhanced. Hence, the Petition requires consideration.

6. On the other hand, Mr. Huded supported the impugned order. He has invited my attention to paragraphs 9,10 and 11 of the reply dated 14th July, 2015 filed by the respondent. He submitted that grandmother of the respondent (mother's mother) is dependent on him. He has to look after medical expenses of his parents as they are totally dependent on him. As the respondent is employee of a Company, he has taken insurance policies covering respondent and his minor son of Rs.5,00,000/- per person. Apart from that, the respondent is ready to incur expenses towards education of minor son Mihir. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the petitioner has not pressed interim maintenance at this stage for herself and is claiming enhancement in the maintenance amount awarded to minor son Mihir. I have already extracted deductions claimed by the respondent in the reply dated 14th July, 2015. In my opinion, the findings recorded by the learned trial Judge in paragraph 12 are with respect without application of mind. It is no doubt true that the respondent claimed deductions in terms of paragraph 11 of the reply dated 14th July, 2015. None the less, the

Judge should have applied his mind whether expenses claimed by the respondent are exorbitant or inflated. In paragraph 9, undoubtedly, the respondent contended that his grandmother (mother's mother) is dependent on him. However, there is no averment that save and except the respondent, nobody is in the family of the grandmother to look after her. That apart, the learned trial Judge also should not have accepted as a gospel truth the deductions claimed by the respondent towards father and mother as also for himself in items No.2,3 and 6 respectively. By that as it may, I need not express any final opinion on this aspect as the main proceedings for maintenance are pending before the Family Court, lest, the observations made herein may influence the final outcome.

8. Having regard to the fact that age of the minor son Mihir is seven years and is a school going boy, in the fitness of the things, it is necessary to direct the respondent to pay maintenance @ Rs.10,000/- per month instead of Rs.6,000/- per month. The impugned order dated 20th May, 2017 stands modified by substituting figure **Rs.10,000/- per month** in place of **Rs.6,000/- per month**. Rest of the order is maintained. The respondent shall clear arrears of maintenance @ Rs.10,000/- per month from the date of filing of the application till 28th February, 2019 within 8 weeks from today. Mr. Huded states that the respondent will pay maintenance @ Rs.10,000/- per month instead of Rs.6,000/- per month on or before 10th day of each month from March, 2019. He further assures that the respondent will not seek further extension of time.

9. In view thereof, the respondent will clear arrears of maintenance within 8 weeks from today and will not seek further extension of time. He will go on paying maintenance @ Rs.10,000/- per month from March, 2019 till disposal of the main proceedings.

10. The learned trial Judge will decide the main proceedings on the basis of the evidence on record and in accordance with law and un-influenced by the observations made herein. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]