

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

WRIT PETITION NO.10625 OF 2018

Mrs. Kaajal Amar Ahuja	... Petitioner
V/s.	
Mr. Amar Ishwarlal Ahuja	... Respondent

**WITH
WRIT PETITION NO.5917 OF 2018**

Mr. Amar Ishwarlal Ahuja	... Petitioner
V/s.	
Mrs. Kaajal Amar Ahuja	... Respondent

Mrs. Seema Sarnaik with Amey Tamhane for the Petitioner in WP/10625/2018, and Respondent in WP/5917/2018.
Mr. Mihir Raje for the Petitioner in WP/5917/2018 and for Respondent in WP/10625/2018.

**CORAM : K. K. TATED, J
DATE : JULY 10, 2019**

P.C.:

. Heard.

2 Both these Writ Petitions can be disposed of by common order as the same are arising out of common order passed by Family Court No.5, Pune.

3 For the sake of convenience, the parties will be referred to as per their nomenclature in the Family Court being Marriage Petition No.1275 of 2012 i.e. petitioner wife in Writ Petition No.10625 of 2018 as Respondent and petitioner husband in Writ Petition No.5917 of 2018 as petitioner.

4 In the present proceedings, Petitioner filed M.P. No.1275 of 2012 for divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred as said Act). In that proceeding, Respondent wife preferred Application under section 24 of the said Act at Exhibit-13 for monthly interim maintenance of Rs.2,00,000/- per month from the petitioner husband and sum of Rs.50,000/- towards the cost of the Application. The Respondent wife filed Application below Exhibit-116 in Hindu Marriage Petition no.1275 of 2012 dated 17.04.2017 for appointment of Chartered Accountant as Court Commissioner to go through the books of accounts of the Petitioner husband and find out the exact monthly income of the husband with following prayers:

“(a) The application may be kindly be allowed and a Chartered Accountant be appointed as Court Commissioner, to explain the aforesaid books of accounts to the Hon'ble court and authenticate them and file report about its veracity before this Hon'ble Court;

(b) The Court Commissioner be kindly allowed to seek any further information from either of the parties;

- (c) The cost of the Court Commissioner be borne by the Petitioner and Respondent equally herein;*
- (d) Any other just and equitable orders may kindly be passed in the interest of justice.”*

5 That Application was allowed by the Family Court on 04.05.2017, holding that the Respondent made out a case for appointment of Court Commissioner to go through the entire records produced by both the parties to find out the monthly and annual income of the petitioner husband. Pursuant to the said order, the Family Court on 27.07.2017 appointed Mr.Joshi, C.A. as per the choice of the Respondent wife and Mr.Oswal, C.A. as per the choice of the petitioner as Court Commissioner. Both the Commissioners, after going through the papers and proceedings, placed before them, filed application dated 26.02.2018 Ex.132, before the Family Court, Pune stating that to ascertain the exact monthly and annual income of the petitioner husband, they require further documents which are as under:

- “1. Market value of the house property owned by the petitioner, situated at Flat No.4, Mansarovar, 676 at Quarter Gate, Nana Peth, Pune - 411042.
2. The petitioner is a partner in M/s. Nagesh Electric and Electronic Corporation and M/s. Jyoti Electric and Trading Co. There were capital withdrawal of Rs.1.69 crores from both the firms (Rs.1.08 cr. in Nagesh.. and Rs.0.62 Cr

in Jyoti..) during financial year 2012-13, further during 2013-14 the profit sharing ratio of the petitioner was reduced to 10% from 45% and 42.50% in M/s. Jyoti Electric and Trading Co. and Nagesh Electric and Electronic Corporation respectively.

In this regard kindly provide the necessary bank statements showing the purpose and use of said capital withdrawals. Also provide necessary information on the new business started by the family members from 2013-14 onwards after reduction in profit sharing ratio.

3. All Bank Statements of Mr. Amar Ahuja from 01/04/2012 to 31/08/2017.

4. PPF Bank Passbook from 01.04.2011 to 31.08.2017.

5. Demat Statement of following client ID from 01.04.2013 to 31.08.2017.

6. Details of investment in Mutual Funds, Debentures and Bonds from 01.04.2012 to 31.03.2017.

7. Details of all Fixed Deposits with banks and financial institutions.

8. Details of investment in gold, silver and other precious stones if any.

We are not in a position to give our opinion to the Hon'ble Family Court unless we are provided with the above referred documents and

time for making our submissions. Further delay in providing the above referred documents by the petitioner will cause genuine hardship to the respondent. Therefore, Hon'ble Judge is requested to look into the matter and give necessary directions.”

6 Application below Exhibit-132 decided by Family Court by order dated 16.03.2018 directing petitioner to produce copies of documents mentioned at Serial No.1, 2 and 4 to 8 for perusal of Court Commissioner. Operative part of the said order reads thus:

“:ORDER:

1. *The request of the Court Commissioner CA Mr.Ajay Joshi is accepted as under:*

2. *The petitioner is directed to produced copies of the documents mentioned at Sr.Nos.1, 2 and 4 to 8 mentioned in this letter-cum-application, in the Court along with one set of copies for providing it to the Court Commissioner for commission work.*

3. *This order is dictated and pronounced in open Court.”*

7 Thereafter, Respondent wife filed Application below Exhibit-136 dated 31.03.2018 under Order 47 Rule 1 of the Code

of Civil Procedure, 1908 for review of the order below Exhibit-132 on the ground that the petitioner husband may be directed to provide his all bank statement of account to the court commissioner to ascertain his monthly and annual income. That application below Exhibit-136 rejected by the Family Court dated 11.06.2018. Hence, the Respondent wife filed the present petition No.10625 of 2018. In similar way, petitioner husband also filed Writ Petition No.5917 of 2018 challenging the order dated 16.03.2018 below Exhibit-132 passed by Family Court for additional documents to the court commissioner.

8 The learned counsel for the Respondent wife submits that, the court below ought to have directed the petitioner to provide all the documents as claimed by the Court Commissioner by their application Ex.132 dated 21.2.2018 to find out the monthly and annual income of the petitioner husband. The Court Commissioner requires all the bank statement of account of the petitioner husband. Without that it is not possible for Court Commissioner to submit his report showing monthly and annual income of the petitioner husband. She further submits that in order dated 11.6.2018 below Exhibit -136, Family Court recorded statement on behalf of the Respondent wife that all bank statement of the petitioner husband is already on record, is not correct. She submits that neither the Respondent wife nor her advocate made any such type of statement before the Trial Court. She submits that on this ground, the order passed by Family Court is required to be set aside directing petitioner to provide all bank statement of his account to the Court Commissioner for

ascertaining his income. She further submits that document at Survey No.3 in letter/application Exhibit-132 filed by the Court Commissioner is most important document to ascertain the exact monthly income of the petitioner husband. Therefore, Respondent wife filed the present Writ Petition on 20.08.2018 with direction to the petitioner husband to produce copies of document mentioned at Serial No.3(all bank statement) mentioned in letter/application Exhibit -132 in Marriage Petition No.1275 of 2012 and provide the same to the Court Commissioner to execute the commission and submit the report to the Family Court. She further submits that if present Writ Petition is not allowed, irreparable loss will be caused to the Respondent wife.

9 On the other hand, the learned counsel for the petitioner husband vehemently opposed the present Writ Petition. He submits that as per the order passed by the Family Court below Exhibit -132, petitioner already provided all the documents to the Commissioner to execute commission work. He further submits that the Family Court rightly rejected the Respondent's application dated 31.03.2018 below Exhibit-136 to review the order below Exhibit-132 dated 16.03.2018. He submits that though all the documents were placed on record, inspite of that, Respondent wife started fishy enquiry to find out the monthly income of the petitioner. He submits that it is the duty of the Respondent herself to prove her case.

10 The learned counsel for the petitioner submits that the Respondent by application below Exhibit-13 claimed

maintenance of Rs.2 lacs per month. In that case, it is her duty, to prove that, she is entitled maintenance charges @ Rs.2 lacs per month. He submits that at the time of passing impugned order dated 16.3.2018 below Exhibit 132, Family Court failed to appreciate the provisions of Order XXVI Rule 9 of the Code of Civil Procedure, 1908. Hence, impugned order passed by Family Court dated 16.03.2018 below Exhibit - 132 is required to be set aside.

11 The learned counsel for the petitioner further submits that during the pendency of the present both the Writ petition, Family Court decided Respondent wife's application below Exhibit-13 for monthly maintenance by order dated 10.10.2018 holding that wife is not entitled any maintenance charges from the petitioner. He submits that in view of subsequent development, i.e. disposal of Respondent wife's application below Exhibit-13 for maintenance charges, nothing survives in both these Writ Petitions. Hence, both the Writ Petitions required to be dismissed in view of subsequent development.

12 Heard both the sides at length.

13 It is to be noted that in the present proceeding, application filed by the wife below Exhibit-116 for appointment of Court Commissioner was allowed by Family Court by order dated 4.5.2017. Thereafter, petitioner husband submitted his relevant papers before the Court Commissioner. On the basis of Court Commissioner's letter / application dated 21.2.2018 Exhibit 132

the Family Court directed husband to produce certain documents. In any case, before complying the orders passed by Family Court for production of documents, the Family Court decided the Respondent wife's application below Exhibit-13 for interim maintenance @ Rs.2.0 lacs per month by order dated 10.10.2018. In view of subsequent development, that the application filed by the wife for maintenance itself stands disposed of, by reasoned order by the Family Court on 10.10.2018, nothing survives in both these Writ Petitions. Hence, following order is passed:

- a. Both the Writ Petitions stand dismissed as infructuous in view of subsequent development.
- b. No order as to costs.

(K.K.TATED, J.)