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

CIVIL WRIT PETITION NO.10689 OF 2019

Akshay Dewani

..Petitioner

Vs

Shefali Dewani

..Respondent

WITH

CIVIL WRIT PETITION NO.10133 OF 2019

Shefali Akshay Dewani

..Petitioner

Vs

Akshay Kishore Dewani

..Respondent

Mr. R.P. Lalwani a/w Ms. Sadhana Jayakar and Mr. J.K. Shah i/b RJ Law for
Petitioner in WP No.10689/2019 and for respondent in WP No.10133/2019.

Smt. T.F. Irani a/w Ms. Sachi Lohdha and Ms. Disha Shetty for Petitioner in WP
No.10133/2019 and for respondent in WP No.10689/2019.

CORAM : A.S.GADKARI, J.

Order Reserved on 29th November 2019.

Order pronounced on 4th December 2019.

ORDER:

1] Both abovementioned petitions impugn common Order dated 8th
July 2019 passed below Exhs.6,10,16 and 29 in Petition No. A-2049 of 2018 by
the learned Judge, Family Court No.2, Mumbai thereby allowing Applications
below Exhs.6 and 10 and rejecting Applications below Exhs.16 and 29 filed by
the respective parties.

2] By Writ Petition No.10689 of 2019, the petitioner/husband has challenged Order passed below Exh.10 granting interim maintenance in favour of the wife and Order passed below Exh.16 rejecting his application for injunction against the wife. The respondent/wife has filed Writ Petition No.10133 of 2019 for enhancing quantum of maintenance as per her Application below Exh.10 and for allowing application in its entirety.

Parties herein will be hereinafter referred to as per their original status/nomenclature before the Trial Court i.e. petitioner in Writ Petition No.10689 of 2019 will be termed as 'husband' and the petitioner in Writ Petition No.10133 of 2019 will be termed as 'wife'.

3] Heard Shri R.P. Lalwani for husband and Smt. T.F. Irani for the wife. Perused the entire record produced before me.

4] The record indicates that, the husband has filed Petition No.A-2049 of 2018 for divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short "the said Act") on 13.7.2018. That the husband also filed an Application below Exh.6 on 13.7.2018 for interim custody/access to their child namely Amiar aged about 7 years.

The wife thereafter filed an Application below Exh.10 under section 24 of the said Act on 4.1.2019 for interim maintenance of Rs.5,00,000/- (Rupees Five Lakhs) with enhancement at 10% each year for her and their minor son

Amiar till hearing and final disposal of their marriage petition and for other reliefs, more particularly mentioned in para No.12 of the her application. The husband also filed interim application below Exh.16 in February 2019 under Order 39 Rule 1 of Code of Civil Procedure for an Order of injunction, directing the wife not to print, publish, send emails, messages or in anyway defame the husband or his Company in social media or any other mode of communication and other consequential reliefs as mentioned in the para No.32 of the said application. The wife filed an application below Exh.29 for providing finance to her by the husband for her foreign trips.

5] As noted earlier, by the impugned Order, the Trial Court has rejected the applications filed below Exh.16 by the husband for temporary injunction and Exh.29 filed by the wife for providing finance to her by the husband for foreign trips. That the application filed by the husband below Exh.6 has been allowed by the Trial Court and it is directed to the wife to provide access of the child Amiar to husband on particular dates on certain conditions. Application below Exh.10 filed by the wife for interim maintenance has been allowed by the impugned Order and the husband is directed to pay maintenance of Rs.1,75,000/- per month to the wife and Rs.50,000/- to their minor child Amiar totalling to Rs.2,25,000/- per month towards interim maintenance from the date of application i.e. 4.1.2019 till the disposal of the main petition. The husband is directed to bear entire educational expenses of the child by directly paying fees to

the school and to the classes which the child is currently taking. The husband is further directed to renew rental agreement regarding current residential address of the respondent, irrespective of the fact whether earlier agreement was done by his company or by himself or in the alternative shall provide a similar flat with similar dimension with similar amenities in the same locality preferably in the neighbourhood of the same building and shall pay security deposit and keep on paying rent till disposal of the main petition. The husband is further directed to provide car of similar brand which was earlier provided to the wife with the facility of Chauffeur, if provided earlier. As noted earlier, the said Order dated 8th July 2019 is impugned herein.

6] Mr. Lalwani, the learned counsel for the husband submitted that, as per the Income Tax Returns filed by the husband, after deduction of income tax he gets salary of approximately Rs.6,32,000/- in his hands. He submitted that, as per the impugned Order, after paying the said amounts ordered therein, in that event nothing will remain in his hands for his own personal expenditure. He submitted that, as per the impugned Order, he will have to pay Rs.2,25,000/- per month to the wife and their son; house rent approximately to the tune of Rs.2,25,000/- per month; school fees of their child of about Rs.90,000/-per month and Rs.25,000/-per month towards tuition fees and expenses for extra curricular activities. He submitted that, apart from the said amounts, the husband has also taken out a Policy of their son for his future educational expenses and he

is paying a premium of Rs.82,000/-per month for the same. He submitted that, if the said amounts are taken into consideration, in that event nothing remains in his hands and the husband will have to spend approximately Rs.15,000/- from his own pocket and therefore Order passed by the Trial Court is not an equitable Order and needs modification by this Court. He submitted that, at the time of deciding an application for interim maintenance under section 24 of the said Act, it was necessary for the Trial Court to consider such sum as having regard to the petitioner's own income and the income of the respondent (wife), it may seem to the Court to be reasonable. He submitted that, while deciding application preferred by the wife under section 24 of the said Act, in the present case, the Trial Court by not considering the parameters mentioned in section 24 of the Act, has in fact applied the parameters or criteria mentioned in section 25 of the said Act and therefore Order passed below Exh.10 is bad in law. He submitted that, the Trial Court has committed an error in taking into consideration the funds received by the Company of the husband where he is employed, as the funds received by the husband himself to treat the real income of the husband. He submitted that, certain observations made by the Trial Court in para Nos.16,19 and 21 of the impugned Order are contrary to the material available on record. He submitted that, interim maintenance awarded to the wife by the Trial Court below Exh.10 is not only excessive, but also exorbitant. He submitted that, the Trial Court has erroneously rejected his application below Exh.16 for injunction.

He therefore prayed that, Order passed below Exh.10 by the Trial Court granting exorbitant maintenance to the wife may be suitably modified by allowing his petition in its entirety.

7] Per contra, Smt. Irani, the learned counsel for the wife vehemently opposed the petition of the husband and submitted that, interim maintenance awarded by the Trial Court below Exh.10 to the wife and child is inadequate and needs to be enhanced by allowing application filed below Exh.10 under section 24 of the said Act. She submitted that, the husband is an ostensible employee/CEO of the Company APG Intelli Homes Pvt. Ltd. and as per her instructions as a matter of fact he is the owner/promoter of the said Company. She submitted that, the Income Tax Returns filed by the husband cannot be accepted as substantive proof exhibiting income of the husband. She drew my attention to the Page Nos.150 to 171 annexed to the compilation of documents filed by the husband which are photo-copies of the pages of Passport of the husband. She submitted that, there are number of entries of immigration which shows that the husband had frequently visited foreign countries mainly to 'Amsterdam' which is heaven for Rave Parties. She submitted that, the husband is addicted to drugs/substance abuse. She submitted that, such frequent trips to foreign countries are not possible in the income shown by the husband to the Income Tax Department and therefore it has to be inferred that, his income is much higher than what is shown in the Income Tax Returns. She further

submitted that, the husband has not annexed all copies of pages of the passport and only selected pages are annexed to the compilation. She therefore submitted that, the husband has not come to this Court with clean hands and therefore the petition filed by the husband needs to be dismissed summarily on that count alone. She further pointed out statements of accounts of the husband which are annexed at page Nos.73 and 97 of compilation. She submitted that, on earlier occasions he had incurred huge expenses towards foreign trips of the wife and their child. She submitted that, application preferred by the husband below Exh.16 for injunction has been rightly rejected by the Trial Court by referring elaborate reasoning on it in para No.26 of the impugned Order and therefore the said Order rejecting injunction application need not be interfered with by this Court in its jurisdiction under Article 227 of the Constitution of India. Lastly, she submitted that, after taking into consideration the total income of the husband and his life style, application preferred by the wife below Exh.10 for interim maintenance may be allowed in its entirety by enhancing interim maintenance awarded by the Trial Court and prayed that, Writ Petition bearing No.10133 of 2019 filed by the wife be allowed.

8] The record reveals that, the husband has produced, below Exh.22, on the record of the Trial Court, various documents including Income Tax Returns for the financial year 2013-2014 to 2017-2018. He has also produced on record his balance-sheets of the said financial years. The Income Tax Returns submitted

by the husband for the financial year 2017-2018 discloses that, his gross income is Rs.1,49,69,299/- and he has paid income tax of Rs.50,40,392/-. The statement of monthly income cash flow submitted by the husband for financial year 2017-2018 discloses that, his monthly income is Rs.6,32,099/-. The balance-sheet submitted by the husband for the year ending on 31.3.2018 discloses that, his total assets are of Rs.9,87,01,126.88.

Perusal of the impugned Order would indicate that, the Trial Court has taken into consideration the balance-sheet of the husband for the year ending 31.3.2017 and by applying parameters mentioned in section 25 of the said Act had fixed quantum of interim maintenance while allowing the application below Exh.10 filed by the wife under Section 24 of the said Act. It appears that, the Trial Court has failed to take into consideration the parameter mentioned in section 24 i.e. having regard to the petitioner's own income and the income of the respondent (wife), it may seem to the Court to be reasonable. Perusal of the para Nos.2 to 7 of the Operative part of impugned Order would indicate that, if the husband incurs and/or pays amounts mentioned therein, then in view of the break-up given by the learned Advocate for the husband and recorded in para-6 hereinabove, it appears that, nothing will remain in the hands of the husband even for his personal expenditure. It further appears to this Court that, the Trial Court has committed an error in arriving at the conclusion to assess the real worth of the petitioner by relying upon print outs from www.reuters.com wherein

it is mentioned that, investment firm JP Morgan intended to invest US \$ 30 Million in Assetz Property Group with whom the husband is employed. Undoubtedly, the said funds were to be credited in the account of the Company for its business purpose and the husband is not the direct beneficiary of the said amount.

9] Merely because the husband visited foreign countries intermittently, it is difficult at this stage to infer that, he was incurring expenses from his own pocket for the same. The record indicates that, Assetz Property Group Company is having its Head Quarters at Singapore and the husband may be visiting various countries for the business purpose of the Company. The respondent-wife is yet to prove the said facts as alleged by her. By the impugned Order, the Trial Court has also directed husband to renew rental agreement regarding current residential premises of the wife and as per submission of the husband, he will have to pay Rs.2,25,000/- per month towards licence compensation/house rent for the same. In view of the expenses which are to be born by the husband in pursuance of impugned Order, it appears to this Court that, interim maintenance awarded to the wife is certainly excessive and exorbitant. According to this Court, an amount of Rs.1,25,000/- per month towards interim maintenance would subserve the ends of justice. Accordingly, the Clause No.2 of Operative part of impugned Order is modified to that extent and the interim maintenance to wife is fixed at Rs.1,25,000/- per month. This amount of Rs.1,25,000/- per month towards

interim maintenance is fixed after taking into consideration the fact that, the husband is incurring other expenses as has been directed by the Trial Court in para Nos.3 to 7 of the impugned Order. The interim maintenance awarded to the child of Rs.50,000/- per month appears to be fair and rational and needs no interference by this Court in it.

In view of the above, prayer of the wife for enhancement of interim maintenance cannot be accepted and considered.

10] As far as application of the husband for injunction below Exh.16 is concerned, the Trial Court has given various reasons for rejecting it, which according to this Court need not be interfered with, as the same are well within the conformity of the record produced before the Trial Court.

11] Hence, the following Order:

- (i) Writ Petition No.10133 of 2019 filed by the wife is hereby rejected;
- (ii) Writ Petition No.10689 of 2019 filed by the husband is partly allowed and the husband is directed to pay interim maintenance of Rs.1,25,000/- per month to the wife from the date filing of application below Exh.10 i.e. 4.1.2019 till the disposal of the main petition No.A-2049 of 2018 pending before the Family Court;

The arrears, if any, be cleared within a period of six weeks from today without seeking extension of time in that behalf.

(iii) Rest of the part/clauses of operative Order of the impugned Order are not disturbed;

(iv) As this Court has reduced the quantum of interim maintenance awarded to the wife, the Trial Court is hereby directed to expedite hearing of the main petition No.A-2049 of 2018 and to make an endeavour to conclude the same within a period of one year from the date of receipt of present Order.

(A.S.GADKARI, J.)