

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11755 OF 2017

Kavita Keshav Jadhav

...Petitioner

Versus

Sanjay Chawla

...Respondent

....

Ms. Seema Sarnaik i/b. Ameya Tamhane, Advocate for the Petitioner.

Mr. Sanjay Oommen i/b. Ms. G.Z. Khan, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 28th MARCH, 2019

P.C.

1. Heard Ms. Seema Sarnaik, learned counsel for the petitioner and Mr. Sanjay Oommen, learned counsel for respondent, at length.

2. This petition takes exception to the order dated 16.3.2017 passed by the learned Principal Judge, Family Court, Mumbai below Exhibit-8 in Petition No.A-140/2014. By that order, the learned trial Judge rejected the application made by the petitioner-wife under Section 24 of the Hindu Marriage Act, 1955 (for short, 'Act') for interim maintenance.

3. Rule. Mr. Oommen 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.

4. The learned trial Judge rejected the application for the reasons recorded in paragraph-5 of the order. Paragraph-5 reads thus:

“5. It is well settled law that Income Tax Return does not mirror the true picture of the person's income. From the Income Tax Returns filed on record, petitioner's income exceeds Rs.18,341,253/- for the Assessment Year 2011-2012. The respondent in her application mentioned that she was earlier working, but thereafter she left the job at the insistence of the petitioner. She earlier not pressed her application, but thereafter when trial commenced she insisted upon hearing the application for interim maintenance. No specific reason is given with regard to change of circumstances. At the outset it is prima facie clear that the respondent was working. In her own words she purchased the property at Thane. Unless the respondent is having sufficient income of her own, she could not purchase any property. In the instant case the respondent to show her bonafide did not file any document on record. She simply mentioned that she is pursuing her hobby of music. The respondent is educated and has experience of working. The respondent is educated and also experienced and can get a decent job. She did not give her approximate income from her hobby in the Music Industry. She may be entitled for maintenance. For reaching that conclusion and to quantify the maintenance amount, it is required that both parties should lead evidence and file all the documents pertaining to their education and income on record. Hence at this juncture at interim stage, no maintenance is granted to the respondent.”

5. A perusal of the above extracted paragraph shows that the learned trial Judge rejected the application on following grounds :

- i. The petitioner-wife did not press her application earlier, she pressed application when the trial has commenced. No specific reason is given with regard to change of circumstances.
- ii. *Prima facie* petitioner-wife is working. She has purchased property at Thane. Unless the petitioner-wife is having sufficient income of her own she could not purchase the property.
- iii. The petitioner-wife has not filed any document to show her bonafides.
- iv. The petitioner-wife is educated and has experience of working. She can get a decent job. She did not give her approximate income from her hobby in the Music Industry.

6. In my opinion, the learned trial Judge has decided the application one sided. The learned trial Judge has recorded the fact that the income tax returns filed by the respondent-husband shows that his income exceeded Rs.18,341,253/- for Assessment Year 2011-2012 and thereafter he did not consider the income of the respondent. The learned trial Judge was expected to consider the income of the respondent-husband as also income of the petitioner-wife and thereafter decided application Exhibit8. As this exercise is not done, the impugned order is set aside. Application Exhibit-8 is restored to the file of the learned trial Judge for deciding it afresh.

7. It is pointed out that 90% of the cross-examination of the respondent-husband is over. It is made clear that this Court has not stayed the trial. The learned trial Judge will decide the application Exhibit-8 without staying the trial. For deciding application Exhibit-8 the parties are at liberty to substantiate their case by filing documents. Let that exercise be done within a period of four weeks from today. All contentions of the parties on merits are expressly kept open. Since the petition is pending from 2014, the learned trial Judge is requested to dispose of the petition as early as possible and in any case by the end of 2019. The learned Counsel for the parties assure that they will extend full cooperation for early disposal of the trial. Rule is made absolute in aforesaid terms with no order as to costs.

8. All concerned parties, including the Family Court, to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)