

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1964 OF 2019

Chetana Shailesh Gurav	...	Petitioner
Vs.		
Shailesh Atmaram Gurav	...	Respondent

Mr. Samir Sarambalkar for Petitioner.
Mr. Raviprakash Chaturvedi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 25, 2019

P.C. :

Heard Mr. Sarambalkar, learned Counsel for the petitioner and Mr. Chaturvedi, learned Counsel for the respondent.

2. This Petition takes exception to the order dated 25.07.2018 passed by the learned trial Judge below exhibit-10 in Petition No.A-1246 of 2017. By that order, the learned trial Judge rejected the application made by the petitioner-wife for maintenance for herself and two children namely, son Sarthak and daughter Swara.

3. By order dated 04.04.2019, matter was listed today in the Supplementary Board and the parties were put to notice that subject to the time constraint and convenience of the Court, Petition will be disposed of finally on that date. In view of that order, Rule. Mr.Chaturvedi waives service for the respondent. Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. Mr. Sarambalkar submitted that Petition No.A-1246 of 2017 is instituted by the respondent-husband for dissolution of marriage between the parties. The petitioner had filed the proceedings under the

Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). During the pendency of that proceeding, she filed application for interim relief. By order dated 22.12.2017, the learned Metropolitan Magistrate, 29th Court, Bhoiwada, Dadar, Mumbai partly allowed the application and directed the respondent to pay a sum of Rs.3,000/- per month to the petitioner since the date of filing of the application. The respondent was further directed to pay rent of Rs.2,000/- per month to the petitioner. It is common ground between the parties that the said order is not challenged and is operating. It is also common ground between the parties that respondent is complying that order.

3. During the pendency of the Marriage Petition, the petitioner filed application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act') claiming maintenance of Rs.3,000/- per month to her and Rs.28,000/- per month to son Sarthak aged about 7 years and daughter Swara, aged about 4 years i.e. Rs.31,000/- per month in total. The respondent filed say dated 24.04.2018 opposing the application. By the impugned order, the learned trial Judge rejected the application.

4. In support of this Petition, Mr. Sarambalkar submitted that the learned trial Judge rejected the application on the ground that petitioner-wife is earning Rs.17,000/- per month. The respondent is earning Rs.24,000/- per month, and thus, the difference of earning between the parties is hardly Rs.7,000/-. The learned trial Judge also noted that respondent is occupying the premises on leave and licence basis and the licence fee is Rs.8,000/- per month. The learned trial Judge, therefore, rejected the application. He submitted that while rejecting the application, the learned trial Judge proceeded on the footing that the application was made only by the wife and not by the children. The

learned trial Judge also accepted that the licence fee was Rs.8,000/- per month as a gospel truth. The leave and licence agreement is not a registered instrument. As the learned trial Judge did not give any reason for rejecting the maintenance to the children, the impugned order deserves to be set aside.

5. On the other hand, Mr. Chaturvedi supported the impugned order. He submitted that the application is made by the petitioner under Section 24 of the Act and the learned trial Judge was justified in rejecting the application for maintenance of the children. Under Section 24 of the Act, maintenance can be awarded either to the wife or the husband. Though the said reason is not recorded in the impugned order, the order can be supported having regard to the fact that application is made under Section 24 of the Act. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. After considering the material on record, the learned trial Judge recorded a finding to the effect that salary of the petitioner is Rs.17,000/- per month. Salary of the respondent is Rs.24,000/- per month. A perusal of paragraph 10 of the impugned order shows that the learned trial Judge referred to the leave and licence agreement showing licence fee @ Rs.8,000/- per month. It is admitted position that the leave and licence agreement is notarized document executed on 05.01.2016. In other words, the agreement of leave and licence is not a registered instrument. In my opinion, the learned trial Judge committed serious error in accepting the case of the respondent as a gospel truth that he is paying Rs.8,000/- per month towards licence fees. The approach of the learned trial Judge in this regard is totally wrong. That apart, a perusal of

the impugned order shows that the learned trial Judge did not give a single reason for denying maintenance to the children.

7. Mr. Chaturvedi relied upon Section 24 of the Act to contend that under Section 24 of the Act, maintenance can be awarded either to the wife or the husband, as the case may be, and not to the children. In my opinion, this submission of the respondent deserves to be rejected as it is settled principle of law that mere mentioning of wrong provision of law is not fatal if the Court otherwise has power to award the maintenance. Section 20 of the Hindu Adoptions and Maintenance Act, 1956 lays down that subject to the provisions of that Section, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children. Sub-section (2) thereof lays down that a legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. Section 21 defines, for the purpose of Chapter III, expression 'dependants'. As per clause (iv) of Section 21, 'dependants' include minor children. Section 22 deals with maintenance of dependants. Section 23 deals with amount of maintenance. As the learned trial Judge has not recorded any reason for denying the maintenance, the impugned order is liable to be set aside thereby restoring exhibit-10 to its original position before the trial Court. Hence, the following order:

- a. The impugned order dated 25.07.2018 is set aside and application exhibit-10 is restored to its original position before the trial Court. The learned trial Judge will treat this application as the application made by the petitioner wife under Section 24 of the Act so far as maintenance for wife is concerned and will also treat this application as application under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 so far as maintenance for children is concerned;

- b. The learned trial Judge will proceed to decide the application on the basis of material on record and on its own merits and in accordance with law;
 - c. All contentions of the parties in that regard are kept open;
 - d. The parties shall appear before the Family Court on 21.06.2019, and for that purpose, no fresh notice be issued to them;
 - e. The learned trial Judge will decide the application within 4 weeks from 21.06.2019.
8. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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