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PARSI CHIEF MATRIMONIAL COURT AT BOMBAY

NOTICE OF MOTION NO.9 OF 2017
IN
PARSI SUIT NO.18 OF 2017

Mrs.Bakhtawar Engineer (Turel)) ...Applicant

IN THE MATTER BETWEEN :

Mrs.Bakhtawar Engineer (Turel),)
Zoroastrian, Indian Inhabitant,)
Age 38 years, Occupation : Homemaker)
Residing at : H/14, Barucha Baug,)
S.V. Road, Andheri (W), Mumbai – 58.) ...Plaintiff

....Versus....

Mr.Naavroze Sarosh Turel)
Zoroastrian, Indian Inhabitant,)
Age 35 years, Occupation : Service,)
Residing at : 12/2879, Turelwadi,)
Near Parsi Fire Temple, Saiyedpura,)
Surat.) ...Defendant

Ms.Taubon F. Irani with Ms.Disha Shetty and Ms.Sachi Lodha for the
Applicant / Plaintiff.

Mr.B.K. Bali with Mr.Khurshed Gandhi and Ms.Anju Singh i/b
M/s.Bali Associates for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 15TH OCTOBER, 2019.

JUDGMENT :-

1. By this notice of motion, the plaintiff seeks an order and direction against the defendant to pay maintenance towards the plaintiff and minor daughter in the sum of Rs.70,000/- per month during the pendency of the suit and also to pay separate amount towards medical expenses of the plaintiff and minor daughter. In the suit filed by the plaintiff the plaintiff has prayed for divorce and for the

custody of minor daughter.

2. The plaintiff and the defendant were married on 1st December, 2014 as per Zoroastrian Parsi Rites and Rituals at Surat. Out of the said wedlock, a daughter is born on 30th August, 2015 who is presently in care and custody of the plaintiff. The plaintiff has been residing with her parents since last several year. It is the case of the plaintiff that the defendant had initially offered an amount of Rs.5,000/- per month as maintenance towards her daughter for a period of three months but thereafter has stopped providing any maintenance either to the plaintiff or to the minor daughter. The plaintiff has summarized in paragraph 7 of the notice about the expenses which are alleged to have been incurred by her under various heads on maintenance of herself and minor daughter including her education.

3. Ms.Irani, learned counsel appearing for the plaintiff invited my attention to some of the averments made in the affidavit in support of the notice of motion and various other affidavits filed by her client and also some of the allegations made by the defendant in his various affidavits filed by the defendant. She also invited my attention to the copies of income tax returns filed by the defendant for the assessment years 2016-17 to 2018-19, a copy whereof was furnished by the defendant's advocate to the plaintiff's advocate. She submits that even according to the said income tax return for the assessment year 2018-19, the gross total salary of the defendant

is Rs.13,94,552/-. She submits that the current salary is much more than the salary received by the defendant in last year. He has also other sources of income as indicated in the income tax returns filed by the defendant. Learned counsel for the plaintiff submits that the defendant also appears to have deposited Public Provident Fund and Provident Fund and in fixed deposits with Housing Development finance Corporation Limited and Canara Bank.

4. Learned counsel invited my attention to the affidavit in reply dated 18th June, 2018 filed by the defendant and in particular paragraph 12 and would submit that even according to the defendant, he is allegedly spending Rs.40,000/- per month on his mother who is staying at Surat and Rs.40,000/- per month on himself for staying at Ahmedabad. She submits that if the defendant himself is spending Rs.40,000/- per month as alleged by him while staying at Ahmedabad, the claim for maintenance of Rs.70,000/- plus separate amount towards medical expenses for the plaintiff and minor daughter staying at Mumbai is fully justified.

5. Learned counsel for the plaintiff also invited my attention to the list of documents along with compilation containing certain bills which according to the plaintiff would indicate that the plaintiff has spent substantial amount under various heads on herself and her minor daughter and would justify the claim for maintenance of Rs.70,000/- per month made by the plaintiff.

6. Mr.Bali, learned counsel appearing for the defendant on the other hand submits that the plaintiff is also now employed and is earning sufficiently and thus the demand of Rs.70,000/- per month for maintaining herself and her minor daughter is not justified. He submits that without prejudice to the rights and contentions of the defendant, his client is ready and willing to pay maintenance of Rs.10,000/- per month to the plaintiff towards herself and for reasonable amount towards medical reimbursement.

7. It is submitted by the learned counsel that the plaintiff has not consulted the defendant for admitting her daughter in the school. He submits that his client has suggested the name of Maneckji Cooper Education Trust School for education of minor daughter. The plaintiff could have admitted the daughter in any cheaper school instead of expensive school for education. The plaintiff has also not consulted the defendant about the name of the doctor for treatment of the plaintiff and her daughter. If the plaintiff has consulted a very senior and expensive doctor, the defendant cannot be made liable to pay the exorbitant amount of medical bills. It is submitted that the plaintiff has not disclosed in the notice of motion that she is already employed and is getting hand some salary from such employment.

8. Learned counsel for the defendant submits that the defendant also has to spend substantial amount to maintain his mother and himself. He has no objection if the plaintiff shifts along with daughter to Ahmedabad.

9. It is submitted by the learned counsel that the documents forming part of the compilation of documents produced by the plaintiff contained various alleged bills and vouchers are not genuine and are disputed by the defendant. He submits that on such alleged bills and memos produced by the plaintiff, she cannot seek any unreasonable amount of maintenance from the defendant.

10. Ms.Irani, learned counsel for the plaintiff in rejoinder would submit that her client will prove the authenticity of those bills and vouchers at the stage of final hearing of the suit. She submits that the defendant cannot force the plaintiff to go to an ordinary hospital for her treatment and for her daughter. She submits that insofar as the name of Maneckji Cooper Education Trust School suggested by the defendant is concerned, her client has no objection to shift her daughter to the said school which is more expensive than the school in which the minor daughter is studying as on date if appropriate amount of maintenance is paid by the defendant.

11. Learned counsel submits that though the plaintiff is now earning a sum of Rs.30,600/- per month as on date and is employed with The Framjee D. Petit Parsee Sanatorium, the said amount is not sufficient to maintain the plaintiff and minor daughter considering the expenses incurred as on date.

12. A perusal of salary certificate produced by the plaintiff

indicates that the plaintiff has been earning a sum of Rs.30,600/- per month and has been working with 'The Framjee D. Petit Parsee Sanatorium'. The income tax returns of the defendant placed on record by the defendant *prima-facie* indicates that the salary of the defendant in the assessment year 2018-19 was Rs.13,94,552/- per year excluding the amount of deductions of Conveyance Allowance in the sum of Rs.19,200/- and House Rent Allowance in the sum of Rs.2,93,004/-, Rs.2,400/- towards the professional tax.

13. A perusal of the said income tax return also indicates that the defendant has deposited various amounts in the fixed deposit with the Housing Development Finance Corporation Limited and Canara Bank and has been earning interest of Rs.18,107/- and Rs.16,568/- on such fixed deposits. The defendant has been depositing a sum of Rs.1,50,000/- in a year in Public Provident Fund and Rs.70,319/- in Provident Fund. The cumulative payslip of the defendant for the year 2019-2020 produced by the defendant indicates that the defendant has received total allowances in the month of July, 2019 only at Rs.1,61,033/- inclusive of salary. The defendant is paid annual incentive by his employer in the sum of Rs.1,80,000/-. His designation is Associate Vice President in Kotak Mahindra Bank, Ahmedabad. The income of the defendant is thus much more than the income of the plaintiff. The minor daughter of the plaintiff and the defendant been in care and custody of the plaintiff as on date and is schooling. The plaintiff is incurring various expenses for maintaining herself and minor daughter. At this stage, I

am not inclined to go into the authenticity of each and every voucher or bills produced by the plaintiff in support of the claims of Rs.70,000/- per month towards maintenance as against monthly salary of the plaintiff of Rs.30,600/-.

14. In my view, Ms.Irani, learned counsel for the plaintiff is right in her submission that if the defendant claims to spend Rs.40,000/- per month on himself and equal amount on his mother staying at Surat, the expenses of maintaining the plaintiff and minor daughter at Mumbai would be much more than the said expenditure alleged to have been incurred by the defendant. The defendant has not produced any document in support of his case that he has been spending Rs.40,000/- per month while staying at Ahmedabad and Rs.40,000/- per month on his mother, who is also staying at Surat.

15. The amount of Rs.10,000/- offered by the defendant without prejudice to his rights and contentions to the plaintiff and for their minor daughter is not a reasonable amount of maintenance considering the expenses being incurred by the plaintiff. However, in view of the fact that the plaintiff is also employed and has been getting a salary of Rs.30,600/- per month as indicated from the salary certificate dated 15th July, 2019 produced by the plaintiff, in my view the maintenance of Rs.70,000/- per month demanded by the plaintiff also is not a reasonable amount.

16. Considering the totality of circumstances set out aforesaid,

I am of the *prima-facie* view that interest of justice would be met with if the defendant is directed to pay maintenance to the plaintiff for herself and her minor daughter at the rate of Rs.45,000/- per month inclusive of medical expenses towards the plaintiff and minor daughter.

17. I therefore, pass the following order :-

a). The defendant is directed to pay interim maintenance of Rs.45,000/- per month to the plaintiff towards herself and her minor daughter inclusive of medical expenses from the date of filing of this notice of motion.

b). The arrears of maintenance shall be paid by the defendant within two weeks from today.

c). The regular maintenance at the rate of Rs.45,000/- per month shall be paid on or before 10th day of each month in advance.

d). The notice of motion is disposed of on aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)

18. The application made by the learned counsel for the defendant for stay of the operation of this order is rejected.

(R.D. DHANUKA, J.)