

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**Writ Petition No.2317 of 2018**

**( Shwetal Upasdev Kamble .vs. Sau. Vimmi w/o Shwetal Kamble )**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions                      Court's or Judge's orders.  
and Registrar's orders

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Mr. D.V. Mahajan, Advocate for Petitioner.  
Mr. C.F. Bhagwani, Advocate for Respondent.

**CORAM : Manish Pitale, J.**  
**DATED : March 12, 2019.**

This is a writ petition filed by the petitioner (husband) challenging order dated 19.03.2018 passed by the Family Court, Nagpur, on an application made by the respondent (wife) for grant of interim maintenance during the pendency of litigation between the parties.

2.           A perusal of the impugned order shows that the Family Court has proceeded on the basis that the respondent was no longer in employment, although she had been working as an Assistant Professor with Abha Gaikwad- Patil College of Engineering, Nagpur, upto June 2015. After taking into consideration the said fact and assessment of the earning of the petitioner who is a Dentist, the Family Court came to a conclusion that the petitioner should pay interim maintenance at Rs.7000/- per month to the respondent from the date of the application i.e. 30.05.2017.

3.           Upon filing of this writ petition, while issuing

notice, this Court granted interim relief to the petitioner subject to clearing arrears of interim maintenance at Rs.5000/- per month and continuing to pay at the same rate. During the pendency of the writ petition, the petitioner claimed that the respondent had misled the Family Court by claiming that she was no longer in employment and that there were documents to demonstrate that she continued in employment and that, therefore, the impugned order passed by the Family Court was required to be interfered with. Since the facts were being disputed before this Court, this Court passed the following order on 10.12.2018:-

*"The order passed by the Family Court directing the petitioner (husband) to pay Rs.7,000/- per month towards maintenance to the respondent (wife) is challenged in this petition.*

*The contention of the petitioner (husband) is that the respondent(wife) has suppressed that she is in employment.*

*According to the respondent(wife), she was in the employment with Abha Gaikwad-Patil College of Engineering from June 2013 to June 2015. The respondent contends that now she is not in the employment.*

*Considering the disputed facts, following order is passed:*

*i) Issue notice to the Principal of Abha Gaikwad-Patil College of Engineering, Mohgaon, Wardha Road, Nagpur. The Principal of Abha Gaikwad-Patil College of Engineering Mohgaon, Wardha Road, Nagpur shall file affidavit along with copies of relevant documents pointing out the period for which Ms Vimmi*

*Ambadas Gajbhiye had been in the employment with the institution. The affidavit shall be filed till 10<sup>th</sup> January 2019.*

*ii) The petitioner as well as the respondent shall deposit Rs.Ten Thousand each with the Registry of this Court within ten days.*

*Out of this amount, the amount deposited by the party, whose claim is found to be incorrect, shall be given to the Principal of the institution towards expenses for filing the affidavit and the amount deposited by the party, whose claim is found to be correct, shall be returned.*

*iii) List the petition for further consideration/ hearing on **18<sup>th</sup> January 2019**.*

*iv) The respondent shall serve copy of this order on the Principal of the institution within two weeks.*

*v) The writ shall be issued after the amount is deposited by both the parties."*

4. In pursuance of the said order, the Principal of Abha Gaikwad-Patil College of Engineering placed submissions/affidavit on record stating that the respondent had served in the said College from 29.01.2014 to 21.04.2016. This period was clearly contrary to the claim made by the respondent before the Family Court, wherein she had claimed that she had worked only till June, 2015. Apart from this, by way of applications, the petitioner has placed on record certain documents given under the Right to Information Act,

2005, by the National Assessment and Accreditation Council as also the Rashtra Sant Tukdoji Maharaj Nagpur University , showing that the respondent is still working in the said College. This is denied on behalf of the respondent. As disputed questions of facts are arising and documents are sought to be relied upon by the rival parties in support of their respective claims, this Court deems it fit that the Family Court must examine these claims and arrive at finding of facts based on proper assessment of the material placed on record by the rival parties and further material that may be placed on record by them.

5. In view of the above, the impugned order passed by the Family Court is quashed and set aside. The parties are relegated to the Family Court for fresh decision on the application for interim maintenance filed on behalf of the respondent. The parties are at liberty to place on record material that was brought to the notice of this Court before the Family Court and such further material that they deem fit for supporting their respective stands. The amounts deposited by the petitioner before this Court till date, shall stand transferred to the Family Court at Nagpur within a period of two weeks. The disbursal of the said amount shall be subject to the outcome of the application before the Family Court. The amounts of Rs.10,000/- deposited by the petitioner as well as respondent in the Registry of this Court, shall be refunded to the respective parties.

6. The Family Court is expected to decide the application for interim maintenance filed by the respondent expeditiously.

**JUDGE**

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