

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4136/2016

(GOPICHAND @ GOPICHANDRA RAGHOBAPATIL **VERSUS** MOHINI @ MANGALA CHOKHINATH
GAJBHIYE (MOHINI @ MANGALA GOPICHANDPATIL))

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

Court's or Judge's orders

Shri Shehjad Khan, Advocate with Shri M.S. Wakil, counsel for petitioner.
Shri H.N. Bhongade, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 19, 2019.

In view of notice of final disposal issued earlier, the learned counsel for the parties have been heard at length.

The challenge raised in the present writ petition is to the order passed by the learned Judge of the Family Court directing payment of interim maintenance till the disposal of the proceedings filed by the petitioner herein seeking a declaration that the respondent is not his legally wedded wife.

The petitioner was married with one Shakuntalabai who had expired in the year 1988. It is the case of the petitioner that in the year 2002, he retired from service from the post of Deputy Chief Personnel Officer. It is the further case of the petitioner that the respondent filed proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act of 2005') seeking reliefs against the petitioner. According to the respondent, on 25.12.1975 she was married with the petitioner and from that wedlock, a son was born on 12.03.1987. The petitioner therefore sought a declaration that the respondent was not his legally wedded wife. In those proceedings, the respondent filed an application seeking grant of maintenance *pendente lite*. By the impugned order, an amount of Rs.7,000/- per month has been directed to be paid as

interim maintenance. Being aggrieved, that order has been challenged in the present writ petition.

It is submitted by the learned counsel for the petitioner that the respondent is not his legally wedded wife. Merely because the proceedings under the Act of 2005 were filed by her, same would not mean that they were legally wedded. Referring to the birth certificate issued by the Nagpur Municipal Corporation dated 16.08.2002, it was submitted that the name of the mother of the child has been differently shown and the name of the respondent does not figure therein. As there was no relationship between the parties, the question of paying interim maintenance would not arise. Hence, the impugned order was liable to be set aside.

On the other hand, the learned counsel for the respondent supported the impugned order. It was submitted that in the birth certificate issued by the Nagpur Municipal Corporation, the name of the petitioner as father of the child has been shown. Moreover, the evidence of the petitioner has been led before the Family Court and the evidence of the respondent is now being recorded. It is thus submitted that there is no reason to interfere at this stage.

The facts on record indicate that the petitioner has sought a declaration that the respondent is not his legally wedded wife. This aspect would require recording of evidence. Both the parties seek to rely upon various documents in support of their contentions. The learned Judge of the Family Court has taken a *prima-facie* view of the matter and has directed payment of interim maintenance. In the light of the fact that the evidence is being recorded before the Family Court, it is not found necessary to interfere with the impugned order at this stage. The interests of justice would be served by directing expeditious disposal of the proceedings by the Family Court without being influenced by the observations made in the impugned order.

Accordingly, the proceedings bearing No.A-473 of 2015 are directed to be decided by the end of December-2019. It is clarified that the direction to award interim maintenance would not influence the learned Judge of the Family Court while deciding the main proceedings. Needless to state that if the petitioner succeeds in those proceeding, he is free to recover the amounts paid to the respondent subject to the adjudication in Miscellaneous Criminal Application No.878 of 2015 filed under the provisions of Protection of Women from Domestic Violence Act, 2005.

With these observations, the Writ Petition is disposed of.
No costs.

JUDGE

APTE