

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

WRIT PETITION NO. 8468 OF 2018

Rakhi Niraj Gupta

vs.

Niraj vijay Gupta

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

Court's or Judge's orders

Shri. S. S. Alaspurkar, counsel for petitioner.
Shri. D. P. Dapurkar, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 12/12/2019

By this writ petition the petitioner has challenged order dated 11/05/2018 passed by the Family Court, Amravati, whereby application for interim maintenance filed by the petitioner under Section 24 of the Hindu Marriage Act has been rejected.

2. The respondent filed an application under Section 9 of the said Act for restitution of conjugal rights claiming that the petitioner had left his company without any justifiable reason. The parties were married on 01/05/2004 at Amravati, and a child was born on 09/07/2009. Due to differences in their matrimonial life, it appears that petitioner along with her child started residing with her father. It is in this backdrop, that the application was filed by the respondent. In the said

application, the petitioner filed an application for grant of interim maintenance on 05/12/2015, claiming maintenance @ Rs.5000/- for petitioner and Rs.4000/- for her child. The said application was opposed by the respondent by filing reply before the Court below. In this pending application, on 12/04/2018, a pursis was filed on behalf of the respondent stating that he was ready to reside with the petitioner and to abide by the condition specifically stated by petitioner in the reply filed to the application for restitution of conjugal rights. A perusal of the said reply would show that despite stating instances of cruelty inflicted by the respondent on the petitioner, it was stated that she was ready to reside with the respondent, if he gave written assurance before a respectful person of the Samaj to behave properly with the petitioner.

3. In this backdrop, when the application for grant of interim maintenance came up for consideration before the Family Court, instead of considering the rival contentions raised in respect of the grant of interim maintenance to the petitioner, the Family Court emphasized upon the said statement made in her reply by petitioner and the aforesaid pursis placed on record on behalf of the respondent. On this basis, it was observed that as both the parties were ready to cohabit, question of cohabitation came to an end and further with this situation, the application for grant of interim maintenance could not be considered at all. On this

basis, the application stood rejected by the impugned order.

4. The learned counsel for the rival parties have made submissions before this Court in support of the respective stands of the rival parties. The learned counsel appearing for the respondent even before this Court asserted that he was ready to cohabit with the petitioner and that therefore, the writ petition did not deserve consideration. The learned counsel appearing for the petitioner submitted that the statement made in the reply to the application for restitution of conjugal rights and the pursis filed much later in April, 2018 by the respondent, could not have been a basis for the Family Court to refuse to consider the question of grant of interim maintenance to the petitioner. It is submitted that even during the pendency of the proceeding before the Family Court and present writ petition before this Court, the respondent had not paid any amount towards maintenance or school fees etc. of the child, leave alone paying any amount to the petitioner.

5. It appears that at this stage there is very little practical possibility of the rival parties living together and therefore, the question of interim maintenance assumes significance particularly, because the child is only 09 years old.

6. In this backdrop, this Court heard the learned counsel for the rival parties on the question of grant of

interim maintenance to the petitioners. The learned counsel appearing for the respondent submitted that the respondent did not have steady source of income and that the allegations made in the application for grant of interim maintenance were not supported with cogent evidence and material. Despite that, it was submitted that the respondent was ready to make some efforts to pay interim maintenance in respect of child. It was submitted that the respondent did not have the means to pay any large sum of money per month towards interim maintenance to petitioner. The learned counsel appearing for the petitioner emphasized that during the pendency of the application for restitution of conjugal rights filed by the respondent, the petitioner could not be left high and dry. It was emphasized that the child is school going 09 years old and it is the moral and legal duty of the respondent, as a father of the child to pay reasonable amount towards maintenance, not only to the child, but to the petitioner as well.

7. Looking to the fact that despite adjournments granted, for the parties to make efforts to settle the dispute amongst themselves, at present there does not appear to be possibility of amicable settlement being arrived at by the parties. This Court refuses to permit the respondent to rely upon a statement made in the reply filed before the Family Court to deprive the petitioner reasonable interim maintenance, during the pendency of the proceedings before the Family Court.

Looking to the fact that this Court is considering grant of interim maintenance pending the disposal of the application for restitution of conjugal rights filed by the respondent before the Family Court, considering the available material on record, this Court arrives at an opinion that a reasonable amount as interim maintenance payable to the petitioner and the child ought to be a direction to the respondent to pay sum of Rs.3000/- per month to the child and Rs.2000/- per month to the petitioner. This Court has taken into consideration the vehement submissions made on behalf of the respondent that he does not have a steady source of income and that therefore, it would be difficult for him to pay the said amount of maintenance from the date of application.

8. In view of the above, the writ petition is disposed of in the following manner :-

1. The impugned order passed by the Family Court dated 11/05/2018, is quashed and set aside.
2. The respondent is directed to pay amount towards interim maintenance to the child @Rs.3000/-[Rupees Three Thousand only] per month from December 2019. Similarly, the respondent shall pay amount of Rs.2000/- [Rupees Two Thousand only] per month towards maintenance of petitioner from December, 2019.

3. The said payments towards interim maintenance shall be made during the pendency of the application for restitution of conjugal rights filed by the respondent before the Family Court.

4. Such payment of amounts shall be made by the respondent to the petitioners on or before the 7th day of each month.

5. Family Court is directed to dispose of application for restitution of conjugal rights filed by the respondent expeditiously, without being influenced by any observations made by this Court in the present order.

6. Writ petition is disposed of in above terms.

7. No order as to costs.

JUDGE