

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.106 OF 2019

Nirja Sandeep Chauhan
-vs-
Sandeep Anantkumar Chauhan

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

Court's or Judge's Orders.

Shri Nitin Vyawahare, Advocate for petitioner.
None for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : April 10, 2019

The respondent has been duly served with the notice issued by this Court. On 02/04/2019 further time was granted to the respondent to oppose the prayer as made in the writ petition. However, the respondent has not chosen to enter appearance and contest the writ petition.

2. Heard the learned counsel for the petitioner finally.

The petitioner is aggrieved by the order dated 17/09/2018 passed by the trial Court on the application for grant of maintenance *pendente lite*.

3. The petitioner has initiated proceedings under Section 27 of the Special Marriage Act, 1954 seeking divorce. The petitioner and

the respondent were married on 29/01/2013 and according to the petitioner on account of harassment at the hands of the respondent she was constrained to file the aforesaid proceedings. In those proceedings an application at Exhibit-5 for grant of maintenance *pendente lite* was filed. Alongwith that application the Income Tax Assessment Order for the year 2014-15 was also filed. The petitioner prayed for grant of maintenance at the rate of Rs.20,000/- per month as well as litigation expenses. This application was opposed by the respondent and by the impugned order the trial Court directed payment of Rs.500/- per month towards maintenance from the date of the order. Being aggrieved the petitioner has challenged the said order.

4. Shri Nitin Vyawahare, learned counsel for the petitioner submits that in support of the prayer for maintenance the petitioner had placed on record the documents pertaining to the Income Tax Assessment of the respondent indicating his gross income for the assessment year 2014-15. From those documents which related to the respondent himself, it could be gathered that the respondent was having a good source of income. The trial Court without considering any of the documents as filed and without assigning any reason whatsoever has directed the payment of Rs.500/- per month.

Moreover, maintenance ought to have been directed to be paid from the date of the application but it has been directed to be paid from the date of the order without assigning any reason. It was submitted that the amount of maintenance as granted deserves to be enhanced with a direction that it be paid from the date of the application.

5. As stated above the respondent has not chosen to contest the writ petition. I have perused the impugned order along with documents placed on record. Perusal of the impugned order indicates that except for observing that the standard of living of both the parties and source of income of the respondent has to be considered, the trial Court has not made any observations with regard to the documents placed on record. The income tax assessment of the respondent for the year 2014-15 indicated gross income of Rs.3,26,558/-. Without adverting to the said document and without assigning any reason as to why an amount of Rs.500/- per month was been awarded as maintenance, the application has been partly allowed. Moreover, the reasons for awarding maintenance from the date of the order have also not been stated. It is found that in the light of the material on record placed by the petitioner a fresh consideration of the application for maintenance

pendente lite is warranted. I am therefore inclined to direct the trial Court to reconsider the said application in the light of the material on record.

6. Accordingly, the order dated 17/09/2018 passed below Exhibit-5 is set aside. The trial Court shall reconsider the said application and decide the same on its own merits. Prima facie, considering assessment orders placed on record by the petitioner indicating the gross income of the respondent, during pendency of the application below Exhibit-5 the respondent shall pay an amount of Rs.5,000/- per month as interim maintenance. However, this direction is without prejudice to the rights of the parties and the trial Court shall adjudicate the amount of maintenance to be awarded on the basis of material on record and without being influenced by the grant of this direction. Maintenance at the rate of Rs.5000/- per month be paid from April 2019 and same would be subject to final orders to be passed on the application below Exhibit-5. The application be decided expeditiously.

With these directions the writ petition is allowed and disposed of with no order as to costs.

JUDGE