

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.900 OF 2020**

Sushant Suresh Kanojia .. Petitioner

Vs.

Mrs. Reena Sushant Kanojia .. Respondent

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Ms. Gayatri Gokhale for the Petitioner.

Mr. Arshil Shah i/b Ms. Preeti Gada for the Respondent.

Mrs. Reena S. Kanojia, is present, in person.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 28th FEBRUARY, 2020.

P.C:-

1. Being aggrieved by order dated 15/10/2019 passed by the Family Court No.2, Mumbai on an Application filed by the Respondent-wife claiming interim maintenance for herself and her child, the Petitioner has knocked the doors of this court. The Petitioner has filed a petition being HMP No.A-2301 of 2015 under Section 13(1)(1A) of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty.

2. The Respondent-wife moved an Application under Section 24 of the Hindu Marriage Act seeking interim maintenance for herself and her minor child. In the said Application, it was averred that the Petitioner is earning Rs.1,50,000/- salary, per month, and also earns substantial amount from his laundry business. The lavish lifestyle of the Petitioner was sought to be established by placing several photographs, statements of bank accounts, certain salary slips, etc. and the fact that he is the owner of Royal En-field Motor Bike. The claim of maintenance and the averments were denied by the Petitioner by relying on the salary slips and by putting forth a specific case that till the year 2015, the salary received by the Petitioner was Rs.18,337/- per month. As far as the income from the laundry business is concerned, the stand taken by the Petitioner was that his mother Smt. Lalita Kanojia was undertaking the work of ironing of clothes and she was assisted by two male workers, but that was a thing of the past and, now she being old, she is not running the said activity. That is how the income of more than Rs.50,000/- per month, through salary and business, was sought to be denied.

3. Apart from the material that was brought before the court, the impugned order would divulge that the learned Judge, Family Court, Bombay has assumed certain statements as statement of facts because the salary account of the ICICI Bank was not produced from the years 2016 to 2019. The Family Court

assumed that since the bank statement is suppressed from the court, it gives rise to a belief that the Petitioner is earning huge amount of salary and receiving income from the business and that is why there is suppression. The photographs downloaded from the Facebook profile, the list of documents at Ex-21 led the court to draw an inference that the Petitioner is partying in Dhaba, Hukka Bar, Pubs, etc. and this shows that he has huge earnings. The Court further held that though he has got sufficient means, he does not want to pay the maintenance. Based on these assumptions and surmises, the Court directed the Petitioner to pay interim maintenance to the tune of Rs.20,000/- per month to the Respondent-wife and Rs.10,000/- to his son.

4. Learned counsel for the Petitioner, at the very outset, made a positive statement to the effect that the Petitioner do not have any qualms about paying the maintenance to his own son. Learned counsel very fairly submitted that he is ready to pay the amount as directed by the Family Court from 28/12/2017. Learned counsel submits that by considering the amount of Rs.10,000/- as directed to be paid towards the maintenance of his son, as of today, the total amount due is Rs.2,60,000/-, out of which, an amount of Rs.70,000/- has already been paid by the Petitioner. Learned counsel also makes a statement that a cheque of Rs.30,000/- is ready with her and she has handed over the same to the Respondent-wife, who is present in the court and has

received an acknowledgment. Counsel for the Petitioner on the basis of instructions from the Petitioner also makes a statement that the balance amount of Rs.1,60,000/- towards the maintenance amount of his son would be paid by the Petitioner within a period of two months from today. She also assures that as directed by the Family Court, the Petitioner would continue to make payment of Rs.10,000/- in favour of his son regularly, on a monthly basis, without any default being committed.

5. Taking into consideration the acceptance of the responsibility by the Petitioner as regards his son and on perusal of the impugned order, it can be meaningfully read that the learned Judge has based his conclusions and drawn the inferences without any actual material being placed before him. The material placed before the Family Court have been blown out of proportion leading to the Petitioner's extravagant life style. The Petitioner has placed on record recent salary certificates, which were not placed before the Family Court and, in the interest of things, both the Petitioner and the Respondent deserve an opportunity to deal with the said documents to arrive at an appropriate quantum of maintenance to be awarded in favour of the Respondent-wife. It is also the case of the Petitioner that the Respondent is engaged in petty business activities as professional beautician and that she has sufficient source of income to maintain herself. According to the Petitioner, this plea of the

Petitioner has not been delved into by the learned Judge, Family Court and, therefore, an opportunity needs to be afforded to both the parties to stake their claim, based on the relevant documentary evidence they would produce before the Family Court.

6. In such circumstances in the fitness of things, the impugned order dated 15/10/2019 directing the Petitioner to pay interim maintenance of Rs.20,000/- per month in favour of the Respondent is set aside whereas, the order directing payment of interim maintenance of Rs.10,000/- to his son is not disturbed. The Family Court, on remand of the matter, will afford an opportunity to both the parties to produce before it relevant material in the form of documentary evidence and, considering the same, would pass appropriate order. Considering the fact that the Application was preferred in the year 2017, the impugned order was passed in the year 2019, and today, it is the beginning of 2020, when the matter is remanded to the Family Court, in the interest of justice, the learned Judge, Family Court is requested to make endeavour to expedite the hearing of the matter and decide the same within four months from today.

7. With the observations above, Writ Petition is disposed of.

[SMT. BHARATI DANGRE, J.]