

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1538 OF 2020

Sharad Sudhir Vashist	...	Petitioner
versus		
Nidhi Sharad Vashist	...	Respondent

Ms.Shilpa Madki a/w Nitin Sharma for the
Petitioner.

Mr.H.V.Holmagi for the Respondent.

Mr.Sharad Sudhir Vashist-Petitioner
present in Court.

CORAM :- SMT.BHARATI DANGRE, J.

DATE :- MARCH 5, 2020

P.C. :-

1. The petitioner has filed Divorce Petition No.A-1002 of 2018 before the Family Court, Mumbai at Bandra for dissolution of marriage which was solemnized on 9th May, 2009. There are two children born out of the wedlock. The son being approximate 10 years of age and the daughter being approximately 8 years of age. The parties do not dispute that both the children are staying with the petitioner and the petitioner is catering to their requirements.

2. The petitioner is aggrieved by the order dated 12th December, 2019 passed by the Family Court, Mumbai at Bandra, by which the Court had directed the petitioner to pay interim maintenance at the rate of Rs.30,000/- per month to the

respondent from the date of application. This amount is directed to be paid till the final disposal of the main petition. In terms of the order passed by the Apex Court on a Transfer Petition (C) No.876 of 2018, directing the Family Court to determine the amount for travelling expenses and stay to be made available to the respondent/wife since she is residing at Rewari in Haryana and for attending the proceedings, she is required to travel to Mumbai, the Family Court has awarded a sum of Rs.8,000/- in favour of the respondent/wife to be paid by the petitioner for each trip so as to remain present for the hearing for herself and her escort.

3. The petitioner assailed the said order on the ground that the Family Court has recorded a perverse finding and has not taken into account the relevant material. According to the petitioner, he was working once upon a time as Second Engineer in Merchant Navy known as VRM Ship Management, but the contention of the petitioner is to the effect that after 2017, he has not been summoned for the said assignment and for the said purpose, he rely on the document issued by the Government of India in form of "Details of Seafarer". According to him, the last assignment which he undertook came to an end on 18th March, 2017. The specific case of the petitioner is to the effect that if the

responsibility of the two young children being assigned to him, he is not able to take up the job which requires him to stay on board for months together. He, therefore, state that the income which the Family Court has assumed to be still being available to the petitioner is an erroneous assumption.

4. His case is also to the effect that the respondent is serving and he has relied upon the statement of bank account of the respondent to demonstrate that regular salary is being credited to her account by her employer, but the said aspect according to the learned counsel, has been completely ignored by the learned Judge, Family Court.

5. With the assistance of the learned counsel for the parties, I have perused the impugned order. There appears to be substance in the contention of the petitioner. The learned Judge has proceeded on a footing that he is serving as Second Engineer in the Merchant Navy and is earning Rs.7,00,000/- per month. Surprisingly, the learned Judge has recorded a finding that the petitioner is living an extravagant life style and has relied upon the statement of account of the petitioner on which the respondent placed reliance on two entries of Rs.700/- and Rs.800/- in the name of Starbucks and on the basis of this, the learned Judge surprisingly records a finding that if one can get

the coffee at the rate of Rs.800, it defines his life style. Instead of choosing a coffee at Cafe Coffee Day or a road side restaurant, the petitioner has indulged himself in a luxurious life style. The said observation of the learned Judge, must be said to be merely based on an assumption and is highly fallacious since a single entry of enjoying a coffee in Starbucks once in blue moon would surely not lead to an inference that the petitioner was living an extravagant lifestyle. Certain stray entries of payments made from bank account has also been relied upon by the learned Judge. The order do disclose that the petitioner is paying the hefty fees of the International School in which the children are admitted. In absence of the source of income from the Merchant Navy, the petitioner had pleaded before the Family Court that he is serving and taking up a regular employment which gives him a paltry sum of Rs.20,000/- per month. The learned Judge record that this is unbelievable. In such circumstances, when the learned Judge got swayed away with certain assumption and did not actually look into the fact as to whether after 2017, the source of income which the petitioner was already enjoying being the Second Engineer in the Merchant Navy still continue to exist, thus the earnings of the petitioner justify payment of maintenance of Rs.30,000/- per month to the respondent, particularly when the petitioner from his financial sources is

taking up the entire responsibility of upbringing the two children, to which the respondent/wife has no contribution.

6. As far as the expenses of Rs.8,000/- to be paid to the respondent for attending the proceedings in the Family Court, Mumbai at Bandra are concerned, the said order has been passed after the Apex Court directed the Family Court to determine the expenses being reasonable for her travel and stay in view of the fact that the application for transfer of her petition which she sought from Mumbai to Rewari came to be refused. I do not find any illegality in the finding written by the Family Court and determining an amount of Rs.8,000/- per trip to the respondent for attending the hearing before the Family Court, which includes her travel expenses as well as the expenses for her stay in Mumbai.

7. In light of the aforesaid findings and observations being made in the aforesaid paragraphs, in my considered opinion, the matter require a re-consideration at the hands of the Family Court by directing it to determine the quantum of maintenance to be payable to the respondent, by taking into consideration the material placed before the Court and not merely on the basis of its own assumptions and surmises and surely not by arriving at an inference on certain stray observations, which the Family Court

has already done in the impugned order. If the petitioner/husband is able to demonstrate that the respondent/wife is earning and is not dependent on her husband, the Family Court is also directed to allow the petitioner to bring the said material on record and consider the same. However, it is informed that in terms of the impugned order an amount of Rs.4,80,000/- is due as on date and the petitioner has defaulted in not complying with the said direction issued by the Family Court and not a single penny has been deposited. On this aspect being pointed out, the learned counsel for the petitioner, on instructions from the petitioner who is present in the Court, makes a statement to the effect that an amount of Rs.1,00,000/- will be deposited by him within a period of 6 (six) weeks before the Family Court and the respondent on an application being made before the Family Court, would be permitted to withdraw the said amount. It is only subject to the deposit of the said amount, the Family Court will proceed with re-hearing of the matter for fixing the quantum of maintenance, if payable to the respondent/wife. The Family Court is requested to expeditiously dispose of the interim application and preferably within a period of three (3) weeks, on expiry of the period of 6 (six) weeks when the amount is deposited by the petitioner, by affording necessary opportunity to the parties on both the sides.

8. With the aforesaid direction, the writ petition is disposed of.

(SMT.BHARATI DANGRE, J.)