

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2169 OF 2020

Avinash Rajendra Rasal	.. Petitioner
Versus	
Jyoti Avinash Rasal	.. Respondent

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Mr. Prasad P. Kulkarni for the petitioner.

CORAM: BHARATI DANGRE, J.
DATED : 4th MARCH 2020

P.C:-

1 The Writ Petition raises two- fold objection. The first being that an order has been passed granting maintenance to a minor child on an application preferred under Section 24 of the Hindu Marriage Act, 1955. The second count on which the impugned order is challenged is that by the said order, the responsibility to maintain the child has been fastened only on the petitioner husband and in particular where according the case of the respondent she also has an earning source. It is the case of the petitioner that she should equally share the responsibility to maintain the minor child.

2 Both the contentions raised in the petition deserve an outright rejection. The first contention about an application being filed under Section 24 of the Hindu Adoption and

Maintenance Act, on perusal of the application, it is not in dispute that the caption of the said application is “Interim Application under Section 24 of the Hindu Adoption and Maintenance Act”. Reading of the application and the prayer made therein would clearly divulge that the application seeks maintenance amount for the minor child and the necessary details of the applicant’s earnings as well as the earnings of the respondent are to be found therein.

3 A specific averment is made to the effect that the child born out of the wedlock is a responsibility of the parents and presently with the amount of salary which she is fetching and pertinent to note that she has admitted that she has an earning capacity, a prayer is made that some responsibility must be fastened on the respondent and therefore, maintenance of Rs.10,000/- is claimed.

4 The said application is responded to by filing the affidavit by the present petitioner and he avers that the applicant is working as “Forest Guard” and this yields her a salary/income of Rs.25,000/- to Rs.30,000/- and she should also share the responsibility of maintaining the child.

5 The application resulted in passing of the impugned order. The Court has passed the said order on the application which was inadvertently captioned as one under “Section 24 of

the Hindu Adoption and Maintenance Act, 1955”. Pertinent to note that Section 24 of the Hindu Marriage Act, 1955 provide for “Maintenance pendent lite” expenses of proceedings” and necessarily involve the maintenance pendent lite claim and paid to the wife or the husband. Section 26 of the said Act contain a provision for custody of children and the said section enumerate that in any proceedings instituted under the Act of 1955, the Court is empowered to pass such interim orders and make such provision in the decree as it deem fit with respect to the custody, maintenance and education of minor children.

6 The purport of Section 26 being to empower the Court to pass interim orders as well as final orders for the maintenance of the child is obvious.

7 The application which is merely titled as the one under Section 24, on its perusal contain all the ingredients of the application under Section 26 and even the relief sought pertain to the power of the Court under Section 26. It is a settled position of law that mere non-mentioning of a provision of law or mentioning an erroneous provision of law though rightly invoking the jurisdiction of a Court which is empowered to exercise its power under a particular statute would not render an order passed by such a competent Court ineffective. It is on this premise and the position of law the first objection deserves a rejection.

8 As far as the second contention as regards the amount of maintenance of Rs.3,000/- which the petitioner has been directed to pay for the maintenance of the minor child, suffice it to note that the petitioner is working as an Assistant Teacher and taking into consideration his earning capacity and also giving due weightage to the earning capacity of the respondent wife who is serving as a Forest Guard, the Civil Judge Junior Division, by the impugned order has directed the petitioner to bear the financial responsibility to the extent of Rs.3,000/- and contribute to the amount required for maintaining the child. It is not in dispute that the minor child Atharva is residing with the mother. A small child of three years obviously cannot be maintained and catered to at a meager amount of Rs.3,000/-. The wife necessarily has to contribute from her share of income in upbringing the child. In any contingency, the petitioner cannot be absolved of his responsibility of contributing financially in the upbringing of the child Atharva, if not he is catering to the emotional need of the child.

9 The impugned order being impeccable not suffering from any infirmity, deserve to be upheld. Resultantly, the Writ Petition is dismissed.

SMT. BHARATI DANGRE, J