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

WRIT PETITION NO.2268 OF 2019

Mrs. Amruta Rahul Gawde

.... Petitioner.

V/s

Mr. Rahul Sharad Gawde

.... Respondent

Mr. Rahul S. Kadam for the Petitioner.

Mrs. Manjula Rao a/w Ms. Shweta Tande for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 21, 2020.

P.C.:-

1] Hearing was continued after the order dated 16th December, 2020.

2] The learned Counsel for the Petitioner Mr. Rahul Kadam has no objection for accepting the affidavit tendered by the Respondent. However, he reserved his right to give oral rejoinder.

3] In the light of the above, I have further heard the learned Counsel appearing for the parties.

4] Mr. Kadam, learned Counsel for the Petitioner would urge that, till date, the Respondent has not moved an application for DNA test though the Petitioner has consented for carrying out such DNA test. It is also claimed by Mr. Kadam that on one hand Respondent is denying his status as that of biological father of the child, whereas on the other hand, proceedings for custody were moved. According to Mr. Kadam, Respondent has admitted his income to the tune of Rs 3 lakhs per month and that being so, the Court below committed an error in not awarding maintenance to the Petitioner being his wife, as she has every right to spend the life with the same status and luxury as that of the Respondent. According to him, Respondent has all means to maintain the Petitioner still he has neglected to pay maintenance.

5] While countering the submissions made on behalf of the Petitioner, Mrs. Rao, learned Counsel for the Respondent would invite attention of this Court to the Income-tax returns of the present Petitioner for the Assessment Year 2015-16 to 2017-18 so as to claim that annual income of the Petitioner was around Rs. 1 lakh during all these three years. She would further claim that pages 279 and 280 of

the record reflect the Fixed Deposits in the name of the Petitioner . That being so, the Court below has rightly observed that the Petitioner has substantial income of interest drawn from the aforesaid Fixed Deposits. My attention has also been invited to the order of dissolution of earlier marriage and the fact that compensation of Rs 10 lakh was paid to the Petitioner.

6] According to learned Counsel Mrs. Rao, Petitioner's father is proprietor of Firm viz. "Life Style and Interior Decorators" in which Petitioner works and earns substantial amount. She has relied on the brochure and resume of the Petitioner so as to substantiate the said claim. Apart from above, it is also urged that in the Aadhar Card of the daughter Kaira, name of the Respondent is not shown as father. As such, submissions are, the order impugned does not warrant any interference as the Respondent has cleared all arrears of maintenance payable to the daughter till this date and shall continue to pay the same, in case if DNA test is answered against the Respondent.

7] As far as denial of paternity of the Respondent is concerned, admittedly, till this date, but for the oral submissions there is no

application taken out by the Respondent for carrying out any DNA test and that being so, the said contentions are without any basis. It will not be out of place to observe here that the Petitioner has already expressed her willingness for carrying out DNA test of which this Court must take judicial note of. Apart from above, there is a presumption in favour of the Petitioner pursuant to the provisions of Section 112 of the Evidence Act of legitimacy of child as admittedly after marriage child was born after more than 8 months.

8] As far as refusal by the Court below in the matter of award of maintenance to the Petitioner is concerned, the Court below has held that annual income of the Petitioner of Rs 5 lakhs by way of interest can be inferred from the record. It is also noted that even if the Respondent is earning Rs. 1.50 lakhs, he has other liabilities also i.e. to maintain his parents and that being so it is observed that only daughter will be entitled to maintenance that too of Rs 15,000/- per month.

9] Family Court while rejecting the prayer for grant of maintenance has observed that the Petitioner is earning around Rs 5 lakhs per year

towards interest received from the Fixed Deposits made with the Bank.

10] If we properly appreciate the documentary evidence, it could be noticed that some of the Fixed Deposits were encashed, may be for incurring expenses towards marriage and other things.

11] It is the case of both the parties that this is a second marriage for both of them out of which present matrimonial proceedings have arisen.

12] As far as the reliance placed on the Fixed Deposits details are concerned, though the same were issued by the Bank on 15/3/2018, the maturity of the Fixed Deposits has already come to an end way back in between 2011 and 2014. However, if it is presumed that some of them were renewed as are reflected in the documents at page 280 that by itself will not demonstrate that the Petitioner is earning around Rs 5 lakhs per year. As such, there is factual error in the order impugned on the aspect of annual income of the Petitioner which is formed to be the basis for denial of maintenance. Having regard to the fact that the Income-tax return reflects the income of the Petitioner to

the tune of Rs 1 lakh, this Court at present is required to consider income of the Petitioner per month to the tune of around Rs 12,000 /- as against the income of the Respondent to the tune of around Rs 18 lakhs per annum. That being so, in my opinion, the Petitioner is entitled for maintenance from the Respondent at the rate of Rs 15,000/- per month in addition to the maintenance of Rs 15,000/- payable to the daughter per month.

13] Considering the fact that the Respondent has denied paternity of the child and though has capacity to maintain the Petitioner, he has neglected to maintain her, it will be appropriate to direct payment of the said maintenance amount from the date of the application. Let the amount of arrears be deposited within 12 weeks from today in the Court below.

14] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)