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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6544 OF 2018**

Swapnil Rajendra Shete	 Petitioner.
V/s	
Priyanka @ Prajakta Swapnil Shete	 Respondent.

**ALONGWITH
CIVIL APPLICATION NO.1012 OF 2019
IN
WRIT PETITION NO.6544 OF 2018**

Priyanka @ Prajakta Swapnil Shete	 Applicant
V/s	
Swapnil Rajendra Shete	 Respondent.

Mr. S.S. Kulkarni a/w Mr. Rohan P. Surve for the Petitioner in Writ Petition and for Respondent in CA No.1012 of 2019.

Mr. Nikhil Wadikar i/b Mr. Nandu Pawar for the Respondent in Writ Petition and for the Applicant in CA No.1012 of 2019.

CORAM: NITIN W. SAMBRE, J.

Order reserved on 20/2/2020

Order pronounced on 25/2/2020.

P.C.:-

1] This Petition is by husband questioning the order of grant of maintenance of Rs 15,000/- in favour of Respondent-wife and son.

2] Events germane for deciding the issue raised in the Petition are as under:-

(i) On 10/7/2016, parties have performed marriage as per Hindu Vedic Rituals.

(ii) It is claimed by the Petitioner that on 12/11/2016, parties started residing separately and a son was born on 24/7/2017.

(iii) Proceedings for judicial separation subsequently converted into divorce, came to be initiated on 17/3/2017 for which application under Section 24 of the Hindu Marriage Act came to be moved on 19/1/2018 for grant of maintenance *pendente lite*

(iv) It is claimed that Respondent-wife was earning upto 4/1/2017 at the rate of Rs 29,000/- per month, which job she resigned on 17/4/2017.

(v) It is further claimed that Respondent-wife got new job at the rate of Rs 16,000/- per month on 23/7/2018,

which she resigned on 30/4/2019 and has secured another new job immediately thereafter at the rate of Rs 18,000/- per month, which fact is not in dispute.

(vi) Respondent-wife initiated proceedings for restitution of conjugal rights on 4/11/2017

3] The order impugned dated 17/4/2018 is in the nature of award of maintenance of Rs 15,000/- for wife and son, which is questioned on the ground that wife was gainfully employed intermittently, as could be inferred from the aforesaid events and that being so, award of maintenance of Rs 15,000/- in favour of wife is not justified. It is claimed that award of maintenance in favour of son, though is not questioned, however, the Court below committed an error in segregating the amount of maintenance from Rs 15,000/- for wife and son.

4] Learned Counsel for the Petitioner would urge that Petitioner, as of today, is earning net salary of Rs 41,000/-, whereas earning of the wife of Rs 18,000/- with effect from 30/4/2019 and Rs 16,000/- from

23/7/2018 is not taken into account. Apart from above, submissions are, wife is not entitled for maintenance as she is residing with her parents and as such, no expenses could be incurred towards residence and other charges. Learned Counsel then would urge that there is liability of repayment of loan amount for which Petitioner is paying an amount of Rs 25,000/- per month and that being so, if maintenance of Rs 15,000/- is paid, hardly anything will be left for Petitioner to maintain himself. As such, it is prayed that the order impugned is liable to be modified.

5] While countering the submissions, learned Counsel for the Respondent would urge that gainful employment of Respondent with effect from 23/7/2018 is not in dispute. According to him, even if said amount is not considered while awarding maintenance, amount of maintenance of Rs 15,000/- is too meagre for Respondent-wife to maintain herself and also the son.

6] Learned Counsel for the Respondent would urge that the maintenance is awarded from 19/1/2018, whereas the Respondent has secured job on 23/7/2018. As such, liability to pay maintenance

cannot be disputed from 19/1/2018 to 22/7/2018.

7] It is further claimed that award of maintenance of Rs 15,000/- is based on earning of around Rs 33,000/- per month of the Petitioner , which salary has been increased to net drawing of Rs 41,000/-. As such, appropriate modification is sought by the learned Counsel for the Petitioner, particularly in the light of increased salary of the Respondent-wife from Rs 16,000/- to Rs 18,000/-.

8] Considered rival submissions.

9] Powers are exercised by Family Court under Section 24 of the Hindu Marriage Act for awarding maintenance *pendente lite* in the divorce proceedings. While doing so, admittedly, income of the Petitioner-husband is taken into account, so also his liability of repayment of loan by EMI of Rs 13,125/- and Rs 9,270/-. Fact remains that said liability is self created, as it is claimed that amount of loan was in the form of personal loan and also for construction of house in the name of his father, after he retired from the employment of MSEB. It is not in dispute that the Petitioner is working as lead engineer with

Construction Consultant Firm and his Salary Certificate depicts that he was drawing net salary of Rs 41,296/-.

10] Even if it is presumed that of this amount of Rs 41,296/-, the Petitioner is required to repay loan amount, that cannot wash away his liability to pay maintenance to his wife and child. Liability of loan is self created liability but even if certain latitude for the same is given, that by itself cannot be accepted as an excuse for overcoming the liability of payment of maintenance. In the case in hand, it is not disputed that from 23/7/2018, Respondent-wife is gainfully employed and is earning around Rs 16,000/- from 23/7/2018 and Rs 18,000/- from 30/4/2019. Of course, the said income is not considered by the Family Court while deciding the proceedings for award of maintenance. However, it is required to be noted that order of award of maintenance of Rs 15,000/- was passed on 17/4/2018, the day on which Respondent-wife was not earning anything. However, order is made applicable from 19/1/2018. Even if same is accepted, the contention of the learned Counsel for the Petitioner that the Petitioner is not liable to pay maintenance for period from 19/1/2018 till 23/7/2018 in view of independent source of income of Respondent-

wife cannot be sufficient to deny the maintenance to Respondent. The Petitioner is liable to pay appropriate maintenance for the said period, having regard to the quantum of his and income of Respondent.

11] As such, for period from 19/1/2018 till 27/7/2018, in my opinion, of the maintenance of Rs 15,000/- wife is entitled to maintenance of Rs 7500/- whereas son is entitled for maintenance of Rs 7500/-. Though there is increase in salary of Respondent-wife from Rs 16,000/- to Rs 18,000/- with effect from 30/4/2019, that by itself will not dis-entitle her to claim maintenance for herself and also for son. Even if it is accepted that net income of husband is around Rs 41,000/- and odd as compared to wife's income of Rs 18,000/-, in such an eventuality having regard to increase in salary of the Petitioner, son will be entitled to maintenance of Rs 10,000/- with effect from 19/3/2019, whereas for Respondent-wife, considering her salary of Rs 18,000/-, she will be entitled to maintenance of Rs 5,000/- from 19/3/2019.

12] The aforesaid order of modification of maintenance is passed

having regard to gainful employment of Respondent-wife and the increased salary of the Petitioner-husband.

13] With the above observation, Petition stands disposed of. As a consequence of disposal of the present Petition, Respondent wife is permitted to withdraw the amount deposited in this Court. Civil Application No.1012 of 2019 is allowed in the above terms.

(NITIN W. SAMBRE, J.)