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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 8067 OF 2018

Ashish Ashok Shinde & Anr. ... Petitioners
Vs.
Dr. Ashok Pralhad Shinde & Ors. ... Respondents

Mr. Sainand Chaugule, for the Petitioners.
Mr. Robin Thomas, for Respondent No. 1.
Ms. M. S. Bane, AGP for Respondent Nos. 2 & 3.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 22, 2020

PC :

1. The challenge in this petition is to the order dated 3rd November, 2017 passed by the Sub-Divisional Officer, Kalyan (for short “SDO”) under S. 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “said Act”), which order has been confirmed by the Collector, Thane on 13th June, 2018.

2. The Petitioners happen to be sons of the first Respondent. The first Respondent had filed an application under the said Act before the SDO claiming maintenance on the ground that he is unable to maintain himself. By the impugned order, the SDO has awarded maintenance of Rs. 5,000/- per month to the first Respondent, to be paid by each of the

Petitioners. It transpired during the course of the arguments that first Petitioner is IAS officer, while second Petitioner is doctor by profession, who is said to be an internee in the Lokmanya Tilak Hospital, at Sion.

3. The learned counsel for the Petitioners has raised two contentions. Firstly, there is a matrimonial dispute between the first Respondent and his wife (mother of the Petitioners) before the District Court, Kalyan, being Marriage Petition No. 14 of 2014, filed by the first Respondent for dissolution of marriage. It is contended that the first Respondent had sought interim maintenance against his wife before the said Court, which application was rejected by order dated 2nd November, 2015 after finding that the Petitioner therein is able to maintain himself. It is submitted that therefore, impugned order could not have been passed. Secondly, it is contended that the first Respondent is a doctor by profession and is income-tax payer. It is submitted that the first Respondent has been staying away from the family since quite long and is not looking after the Petitioners or other family members. He therefore, submits that the authorities below were in error in granting maintenance.

4. Learned counsel for the first Respondent has submitted that the income-tax returns submitted are of the year 2011 to 2013, while the application for maintenance is filed by the first Respondent in the year 2017. He points out that on account of illness of the first Respondent, he

is unable to carry on his medical profession, which is evident from MRI scan report dated 14th May, 2017, which is placed on record. He submits that the dispensary has also been sold by the first Respondent, and therefore, first Respondent is unable to maintain himself.

5. I have considered the circumstances and submissions made. With reference to the order dated 2nd November, 2015 passed by the learned District Judge in Marriage Petition No. 14 of 2014, perusal of the said order shows that both parties to the said marriage petition i.e. first Respondent and his wife had sought maintenance against each other. In para 7 of the said order, the learned District Judge has found that none of them had produced anything on record, showing their earning abilities or monthly income. It has further noted that wife of the first Respondent was professor in a college, and in that view of the matter, no interim maintenance was granted by the District Judge. In my considered view, Petitioners cannot justifiably place reliance on the said order. Insofar as income-tax returns produced on record are concerned, it is evident that said returns are from 2011 to 2013 while application for maintenance has been filed in 2017.

6. Learned counsel for the Petitioners strenuously urged that income-tax returns show that first Respondent was paying salary of Rs. 40,000/- to the compounder. What I find is that Rs.40,000/- is shown

to be paid to the compounder for the whole year. That apart, a person on account of subsequent events including his health condition can become invalid and consequently unable to maintain himself. At the cost of repetition, it needs to be noted that last return was of the year 2013 while the application for maintenance filed by the first Respondent is of the year 2017. There is MRI scan report of the first Respondent dated 14th May, 2017, which shows that there is some irregularity with marrow edema in D11 and D12, scarlisation of L5 vertebral body. It is significant to note that it is case of the petitioners that health condition of the first Respondent is on account of his advanced age and the life style adopted by the Petitioners, which is more specifically stated in para 14 of their reply dated 7th June, 2017. Thus, *prima facie* the medical condition cannot be said to be disputed. I have gone through the impugned order, and considering over all circumstances, and ability of the Petitioners, no exception can be taken for the award of maintenance to the first Respondent at the rate of Rs. 5,000/- per month to be paid by each of the Petitioner. In the result, writ petition is dismissed with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

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Halemath

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by Vinayak P.
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