IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10852 OF 2018

WITH

CIVIL APPLICATION NO. 2200 OF 2018
WITH
CIVIL APPLICATION NO. 2438 OF 2018
WITH
INTERIM APPLICATION NO. 1 OF 2019
WITH
CIVIL APPLICATION NO. 763 OF 2019

Poonam Jaidev Shroff ...Petitioner/Applicant.

Vs.

Jaidev Rajnikant Shroff ... Respondent.

Mr. Rohit Kapadia, Senior Counsel a/w Mr. Mustafa Doctor, Senior Counsel, Ms. Chandana Salgaonkar and Mr. Hridhay Khurana i/b M/s. HK Law Associates for the Petitioner.
Mr. Navroz Seervai, Senior Counsel a/w Mr. Vineet Naik, Senior Counsel, Mr. Harsh Buch, Mr. Sameer Tapia, Ms. Komal Joshi, Siddhi Doshi, i/b M/s. ALMT Legal for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 6th FEBRUARY, 2020

P. C.:-

By the present Petition under Article 227 of the Constitution of India, the Petitioner–wife has impugned Order dated 30th July, 2018 passed below Exhibit-40 in Petition No.A-2742 of 2015 by the learned Judge, Family Court No.7, Mumbai, partly allowing the said Application below Exhibit-40 along with additional affidavit below Exhibit-50.

2 By the impugned Order dated 30th July, 2018, the Trial Court has directed the Respondent herein as under:-

i] To pay an amount of Rs.7,00,000/- (Rupees Seven Lakhs Only) per month towards interim maintenance to the Petitioner herein from the date of filing the Application till disposal of the main Petition.

ii] To pay an amount of Rs.5,00,000/- (Rupees Five Lakhs Only) per month towards interim maintenance to the daughter-Rudritara from the date of filing the Application till disposal of the main Petition.

iii] To continue spending upon the daughter as he is doing from the date of separation for the welfare of the minor daughter.

iv] To pay an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) towards total litigation expenses of the present proceeding to the Respondent.

The present Petition is filed by the wife for, allowing her Application filed below Exhibit-40 in its entirety. In the said Application filed below Exhibit-40 the Petitioner has claimed an amount of Rs.1 Crore 30 lakhs per month by way of interim maintenance for herself and Rs.30 lakhs per month by way of interim maintenance to their daughter-Rudritara, from the Respondent and for other consequential reliefs including the litigation expenses filed by and/or against the Respondent.

3 The record reveals that, Respondent-husband has filed a Marriage Petition No. A-2742 of 2015 for dissolution of marriage solemnized between the Petitioner and Respondent on 27th November 2004, on the grounds more specifically mentioned in the Petition.

In the said Marriage Petition, the Petitioner-wife filed an Application below Exhibit-40 for interim maintenance or alimony *pendente lite,* claiming an amount of Rs. 1 Crore 30 lakhs per month for herself and Rs. 30 lakhs per month for the daughter of Petitioner and Respondent namely Ms. Rudritara. The Petitioner also claimed an amount of Rs. 30 Lakhs per month to meet litigation expenses filed by and/or against her, as noted above.

In her said Application for interim maintenance, the Petitioner- wife has in detail mentioned about her luxurious lifestyle and has stated that, the Petitioner-wife as well as Respondent-husband belongs to the uppermost echelons of the society. Their standard of living is very high. They consume and utilize the very best of the luxuries, which are on the offer. Each of the holiday/vacation taken by the Respondent-husband costs about Rs.30 to 50 lakhs. That, the Petitioner's Air Travel abroad is only by first class or by Respondent-husband's private Jet or Chartered Flight. The stay during holidays/vacations is at exclusive ultra-luxurious hotels/resorts. The shopping of the Petitioner on each of the aforesaid holidays/vacations costs about Rs.15 to 20 lakhs, in addition to other expenses. Apart from the said, average regular shopping for the Petitioner is about Rs.15 to 20 lakhs per month. That, the Petitioner purchased products from top of the line uber luxurious brands in the world. A number of luxurious brands are mentioned in paragraph No. 26 of the Application filed by the Petitioner. It is further stated that, the Petitioner regularly arranges parties and from the concept of the ambiance to the catering, the Petitioner strives to keep everything exclusive and special. That, such parties are also very expensive to arrange and party of the nature organized by the Petitioner could cost about Rs.20 to 50 lakhs. The Petitioner-wife has also narrated various other heads of expenses to maintain her luxurious lifestyle. It is stated that, the said standard of living is entirely kept up on the income and wealth of the Respondent-husband. It is commensurate with the income, status and wealth of the Respondent and the Petitioner herein as the wife of the Respondent.

The Petitioner was totally depending on the Respondent for this financial support. The Petitioner, therefore, estimated that, she spent about Rs.1 Crore 30 lakhs each month for maintaining her lifestyle while she was residing with the Respondent. The Petitioner contended that, she has no independent source of income or earning and at present the Petitioner's mother is financially supporting her. However, the Petitioner cannot continue to depend on her mother to maintain her lifestyle. That, the Respondent has kept the Petitioner out of her matrimonial home and therefore, the Petitioner is residing with her mother. It is further stated that, the Respondent has embroiled the Petitioner in several litigations before different fora and the Petitioner is required to spent huge amounts of money to defend herself from the same. The Petitioner contended that, the Respondent has devised a strategy to financially drain out the Petitioner by filing so many cases against her. Therefore, the Petitioner estimated that, she needs to spend about Rs.30 lakhs each month for defending and/or pursuing various litigation filed by the Respondent and/or against the Respondent.

While claiming maintenance for their daughter Ms. Rudritara aged about 12 years, the Petitioner has enumerated various heads of expenses and has claimed an amount of Rs.30 lakhs for her monthly maintenance.

The Petitioner in addition to her Application filed below Exhibit-40 for alimony *pendente lite* also filed an affidavit below Exhibit-50 to supplement the Application for interim maintenance and to furnish additional details and particulars. It is stated that, it is not possible for her to state the exact income of the Respondent-husband as he is Non Resident Indian (NRI). That, the Respondent is a British citizen and a resident of Dubai and therefore the Income Tax Returns filed by the Respondent-husband in India do not reflect his global income, as he is statutorily required to file only the income received in India and paid taxes on his income in India. That, the Respondent-husband has a labyrinth of companies through which his assets are held. That, in the circumstances, the income of the Respondent would have to be inferred by his wealth through the shareholding in various companies, his social position, expenses incurred on his extravagant lifestyle and also the expenses when the Respondent-husband was financially supporting the Petitioner-wife and their child. The Petitioner has given details of various companies with respect to which the Respondent is connected with and the alleged income received by him through the said companies. The Petitioner-wife has stated that, the Respondent-husband is having extra marital affairs with one lady.

She has alleged that, after the matrimonial dispute arose between the parties herein, the Respondent-husband sold his entire shareholding in Sadafuli Finvest Private Limited (SFPL) to one Teknomic Consultants Private Limited (TCPL) for Rs.45,11,260/-. The said Sadafuli Finvest Private Limited was the owner of the matrimonial home of the Petitioner and the same was sold to Teknomic Consultants Private Limited. It is alleged that, the said matrimonial home is valued more than Rs. 200 crores. That the Directors of the said Teknomic Consultants Private Limited are the employees of UPL Limited which company is directly controlled by the Respondent-husband herein. The Petitioner has also given certain instances of lavish lifestyle of the Respondent. The Petitioner in the facts and circumstances stated in the said affidavit and therefore requested the Trial Court to allow the said Application for interim maintenance filed below Exhibit-40 along with arrears from the date of filing of the said Application.

4 The Respondent-husband opposed the said Application for interim maintenance filed below Exhibit-40 and Affidavit filed below Exhibit-50 by filing his detailed reply below Exhibit-53.

The Respondent in his reply has stated that, the said Application preferred by the Petitioner-wife is absurd and she is seeking ad-interim maintenance of an amount, which is completely unheard of and shows the true and malicious intention of the Petitioner. That, the said Application filed by the Petitioner does not set out under which provision of law, the said Application was preferred and therefore, *prima facie* itself, it appears to have been filed under disguise with malafide intention of extorting money from the Respondent. That, the sole intention was to harass the Respondent by filing the said Application stating that, it was filed under urgency and in utmost hurry.

The Respondent has denied all the allegations and/or claims made by the Petitioner against him. The Respondent has stated that the Petitioner has deliberately suppressed material information pertaining to her Income Tax Returns and/or her own income in the said Application filed below Exhibit-40. The Respondent has stated that, the Petitioner is drawing fees of Rs.89,755/- being a Director in Rudritara Properties. That, the Petitioner has exaggerated and twisted the true and material facts to obtain orders from the Court and therefore, the Application of the Petitioner suffers from *suggestio falsi* and *suppressio veri* and therefore deserves to be rejected.

The Respondent has contended that, the Petitioner has falsely projected in the said Application that, she is totally dependent on the Respondent for her daily livelihood. That, the Petitioner has approached the Court seeking maintenance without disclosing material and true facts that she has independent sources of income which she receives out of her own business as well as from properties inherited by her from her family. The Respondent submitted that, if a party blatantly lies in the manner set out in the said reply, the Application filed by the Petitioner ought to be dismissed with exemplary costs.

The Respondent further stated that, the Petitioner and Respondent got married under the provisions of the Special Marriage Act on 27th November 2004 and the certificate to that effect has been issued by the concerned Authority. That, the Petitioner belongs a well known "Industrialist's" family and is known to have been into the business of trading in original paintings of well known artists. That, in addition to it, the Petitioner is beneficiary of her family property worth crores of rupees. The Petitioner is a shareholder in the 'Nirlon Group' of companies, holding shares worth a substantial amount of money. That, Nirlon is in partnership with GIC which is one of the biggest sovereign funds and is worth over Rs.2,000/- crores. That, the Petitioner has falsely projected in her Application that, she is totally dependent on the Respondent, which is a blatant lie. The Respondent therefore, submitted that, the Petitioner is a self sufficient individual being more than capable to provide for herself and the contentions thus urged by her are false and incorrect. The Respondent had also submitted that, the Petitioner should be called upon to produce her Income Tax Returns and Bank Statement which would substantiate that the Petitioner has an independent source of income. The Respondent has further stated that, the Petitioner is engaged in the businesses viz. "i) Trading in original paintings, ii) Promoter of Nirlon Group, iii) Owner of immovable properties" which gives her huge income. The Respondent has alleged that, the atrocious behaviour and the abusive and aggressive conduct of the Petitioner towards his children and him, is the cause of marital discord between them. The Respondent has made a categorical statement that he will continue to look after his daughter-Rudritara born out of the wedlock from the Petitioner.

The Respondent has stated that, he being Global CEO of UPL, he has been provided the residential premises at 82, Pali Hill, Bandra West, Mumbai, by his employer company on leave and license basis from another company. He has stated that, the said premises has still not been adjudicated as the matrimonial home by the Hon'ble Supreme Court before which a Civil Appeal arising out of an Order restraining the Petitioner from entering the premises i.e. 82, Pali Hill, Bandra, Mumbai, passed by the Family Court is still pending. It is stated that, the Petitioner has filed multiple proceedings against the Respondent, both Civil and Criminal and has engaged the most expensive lawyers and Senior Counsel to represent her so that she can seek adverse orders against him. Therefore, in such circumstances, the Respondent is not willing or obligated to pay any money to the Petitioner which will only help her to use the same to fight litigation against the Respondent. It is stated that, the Petitioner is trying to extract money from the Respondent.

The Respondent has further stated that, the trips as mentioned by the Petitioner, were the trips made with him and his family when the Petitioner accompanied him for the trips as she was married to him. That, most of the trips were certain perks and benefits given to him by his employer for his service rendered therein and rest were either trips made to his house in Dubai with his family or were family trips where Respondent was a part. The Respondent has stated that, therefore the expenses incurred for and during these trips cannot be included as maintenance to the Petitioner as the same were incurred by his employer and not by himself in his personal capacity. The Respondent has further stated that, he did not organize the parties for the well renowned personalities as mentioned in the Application. He has stated that, the said parties were in a normal course of his business as he is the Global CEO of his employer company. That, he organized such parties for his business activities and promotion and that the same were managed by professionals. The Respondent has made a categorical statement that, the Petitioner was only a part of the parties as she was married with Respondent. That being a member and accordingly a part of such organization and events is a part of his business, promotion and the Respondent being his wife was merely present at such occasions and out of the relationship of Petitioner with him at that time the Petitioner automatically would be considered as a host. The Respondent has called upon the Petitioner to the strict proof to establish that, she was crucial in organizing any of such events which were attended or organized by the Respondent. The Respondent has contended that, the Petitioner is claiming that, she is without any money from April 2016, despite the said claim, the Petitioner is filing multiple litigations in all Courts and hiring the most expensive lawyers and Senior Counsel to represent her. It is stated that, it is a known fact that, the Petitioner comes from a very affluent and wealthy family and is worth over Rs. 2000 crores.

The Respondent has further stated that, his standard of living is not very high. He has stated that, all expenses which are incurred are paid by his employer as the Respondent is the Global CEO of his employer company UPL. He has contended that, the Petitioner is making false claim with respect to his expenses and has called upon the

Petitioner for the strict proof thereof. The Respondent has made a categorical statement that, he is not obligated to provide for frivolous expenses and lifestyle just because the Petitioner enjoyed the same in her father's home. The Respondent has stated that, he is employed by a company and receives remuneration for the same. That, he has three children to take care of and support and do not wish to indulge in the frivolous lifestyle that the Petitioner is referring to.

With reference to various claims and averments made by the Petitioner pertaining to the expenditure of the Petitioner, the Respondent has called upon the Petitioner to the strict proof thereof. The Respondent has contended that the Petitioner has not produced any document of evidence and details in support of her expenses of Rs. 1 Crore 30 lakhs per month for maintaining her lifestyle. He has stated that, the Respondent comes from a very wealthy background and has following properties and assets which are known to him and are worth hundreds of crores of Rupees. The Respondent has given the following list of properties owned/held by the Petitioner.

(i) 45% owner of the property she is currently living in, i.e., 38, Pali Hills, Mumbai. Respondent has 100% possession of the said property which is worth around Rs. 300 crores.

(ii) Property admeasuring around 5 acre in Ahmedabad worth around 250 crores.

(iii) Farmland near Palanpur admeasuring around 200 acres worth around Rs. 100 Crore.

(iv) Two properties in Ahmedabad – each worth Rs. 50 crore.

(v) Shares of Nirlon Company worth Rs. 100 crore.

(vi) Jewellery worth around 200 crore.

Apart from the facts mentioned herein above the Respondent has also stated various circumstances which according to him, prohibits the Petitioner from claiming such exorbitant interim monthly compensation and requested the Trial Court to dismiss the said Application with costs. The Respondent also filed a detailed reply in July 2018 to the Petitioner's additional Affidavit filed below Exhibit-50 and has denied the contentions of the Petitioner therein.

The Record discloses that, the Petitioner had filed an Application below Exhibit 36, for restoring her articles in the house, to which the Respondent has filed his reply below Exhibit 39 and along with it, the Respondent has also produced on record certain documents i.e. income tax returns and other related documents of the Petitioner, thereby depicting the annual income and her other sources of income. It appears that, the said documents are produced on record to support the contention of the Respondent with respect to the income of the Petitioner and to negative the claim of the Petitioner that, she is suffering from financial hardship.

5 The Trial Court after hearing the parties to the said Application filed below Exhibit-40, additional Affidavit filed below Exhibit-50 and perusing the material available on record has passed the impugned Order dated 30th July 2018 and has awarded interim maintenance in favour of the Petitioner and Ms. Rudritara, daughter of the Petitioner and Respondent as noted in paragraph No.2 above.

6 At the outset, it is to be noted here that, initially while filing the Marriage Petition No. A-2742 of 2015, the Respondent in the cause title and at other relevant places had stated that the said Petition was being filed under the provisions of Hindu Marriage Act, 1955. The record indicates that, the same has been subsequently corrected and it is stated that, the said Petition has been filed under the provisions of Special Marriage Act, 1954. The Petitioner in paragraph No.1 of her Application filed below Exh. 40 has made a categorical averment that, initially the said Marriage Petition seeking dissolution of marriage was filed under the provisions of Section 13 (1)(i-a) of the Hindu Marriage Act, 1995 (Sic 1955). It is stated that, the said Petition was filed on 6th October, 2015 and on 14th October, 2015, the Respondent unilaterally amended the Petition without any notice to the Petitioner and converted the same to a Petition under the provisions of Special Marriage Act, 1954. The record further discloses that, the Petitioner

filed the present Application for interim maintenance below Exh.40 without mentioning any provision of law therein. That, at the time of hearing of the said Application before the Trial Court, the learned Advocate appearing for the Petitioner made a categorical statement that, the interim maintenance Application has been filed under Section 24 of the Hindu Marriage Act and the said Application be decided on merits by treating it to be one under the provisions of Section 24 of the Hindu Marriage Act. It is thus clear, that the learned Advocate appearing for the Petitioner before the Trial Court had given a clear concession for deciding the said Application under Section 24 of the Hindu Marriage Act and had waived the right to contest the said matter under Section 36 of the Special Marriage Act. It is to be further noted here that, in Ground (A) of the present Petition the Petitioner has specifically pleaded that, the Divorce Petition has been filed under the provisions of Special Marriage Act and despite arguments advanced by both the sides on applicability of Section 36 of the said Act, the Trial Court has applied the provisions of Section 24 of the Hindu Marriage Act while deciding the Application for maintenance filed by the Petitioner.

In view thereof, during the course of arguments, on 31st January, 2020 this Court raised a query with Mr. Kapadia, the learned

Senior Counsel and requested him to explain the said anomaly. Mr. Kapadia submitted that, the Petition for dissolution of marriage has been filed by the Respondent under the provisions of Special Marriage Act, 1954 and the Petitioner's Application for interim maintenance be considered under Section 36 of the Special Marriage Act. Mr. Kapadia, on instructions, further conceded that the Marriage Petition filed by the Respondent is in fact under the provisions of Special Marriage Act and therefore, Section 36 of the said Act will only have application in the present proceedings. He further submitted that, the proceedings pending before the Trial Court, i.e. Marriage Petition No. A-2742 of 2015 are governed by the provisions of the Special Marriage Act, 1954 and not by the Hindu Marriage Act, 1955. The statements made by Mr. Kapadia, the learned senior counsel on instructions from the Petitioner, are accordingly accepted.

7 Mr. Kapadia, the learned senior counsel submitted that, the Family Court has proceeded on an erroneous basis that, the only standard for determination of quantum of maintenance payable is ascertained on what is necessary or adequate for the sustenance of the Petitioner-wife. That, the basis laid down uniformly requires such an amount to be granted as maintenance as may be necessary to maintain the Petitioner-wife in the same standard of lifestyle which she was

enjoying during her residence at her matrimonial home. He submitted that, in stark contrast to the above, the Family Court has failed to order the Respondent-husband to produce his Income Tax Returns and other relevant documents. By relying on the decision of the Supreme Court in the case of *Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors. Reported in AIR 1968 SC 1413 : (1968) 3 SCR 862*, he submitted that, it has been clearly laid down by the Supreme Court that, the person on whom the burden lies under Section 106 of the Evidence Act, must produce the best evidence in his possession and that, if he does not do so, an adverse inference must be drawn against him. That, this obligation to produce the best evidence is independent of the burden of proof consideration. He submitted that, the Respondent did not produce his Income Tax Return and other related documents though the Petitioner sought inspection of the said documents by filing an Application below Exh. 33 on 18 August, 2016 before the Family Court. However, the Family Court did not pass order on it allowing such inspection. He submitted that, uniformly it is the settled law under Section 106 of the Evidence Act that, it is the burden of the Respondent-husband to produce the best evidence and if he does not do so, an adverse inference needs to be drawn against him. That, the adverse inference is not dependent upon whether a party was called upon to produce some documents or not.

He submitted that, while considering an Application for maintenance *pendente lite,* the only consideration before the Court is inability of the spouse to maintain herself or himself for want of financial means or inadequacy of financial means to maintain at the level of social status of the other spouse from whom interim maintenance is sought and not the misconduct of the Applicant spouse because in the matrimonial dispute between spouses, there would always be allegation of matrimonial offence or misconduct. He submitted that, the question as to what income is sufficient for support of a wife, would, whether one likes it or not has to be determine with reference to the class she and her husband belong to. Therefore, what may be considered to be sufficient for the support of the wife of a petty clerk would not be regarded to be sufficient for the support of the wife of a high-salaried big officer or a businessman like the Petitioner in the present case. He submitted that, the record shows that whilst the Income Tax Returns of the Petitioner-wife were before the Family Court, no Income Tax Returns or allied documents of the Respondent-husband were produced. In support of his contentions, he relied on decisions of the Supreme Court and various High Courts namely- *(i) Jasbir Kaur Sehgal (Smt.) Vs. District Judge, Dehradun & Ors. reported* *in (1997) 7 SCC 7, (ii) Bijal W/O Parag Dave Vs. Parag Labhashankar Dave reported in AIR 1999 Bom 237 : (1999) 2 Mah LJ 276 : 1999 SCC OnLine Bom 149, (iii) Radhika Vs. Vineet Rungta reported in 2004 (73) DRJ 311, (iv) Kusum Sharma Vs. Mahinder Kumar Sharma reported in AIR 2015 Del 53 : (2015) 217 DLT 706 : 2015 SCC OnLine Del 6793, (v) Jayant Bhargava Vs. Priya Bhargava reported in 2011 (123) DRJ 388 and Chitra Sengupta Vs. Dhruba Jyoti Sengupta reported in AIR 1988 Cal 98 : 1987 SCC OnLine Cal 66.* He submitted that, the Respondent-husband is living a lavish lifestyle and is having two houses at London. That, in contrast thereof, the Petitioner-wife has not been provided with appropriate residential accommodation by the Respondent-husband.

He submitted that, the Family Court has proceeded on an erroneous basis that, the earning of the Respondent-husband is in the range of Rs.8,00,00,000/- to Rs.13,00,00,000/- per annum. That, the ascertainment of the said figures are only the salary that, the company UPL paid to the Respondent-husband, as shown in the annual reports of UPL. That, no documents were produced by the Respondent-husband showing the receipt of salary or compensation from the various subsidiaries of UPL, whose affairs are also being looked after by the Respondent-husband. He submitted that, according to the Petitioner there are 77 such other subsidiary companies, which the Respondent has not even denied. That, the remuneration received by the Respondent-husband from the said 77 subsidiary companies and also the value of dividend income from 54,00,109 shares has also not been taken into account. He further submitted that, whether the conduct of the Respondent-husband is above board also needs to be considered. That, way back in the year 2012 when the matrimonial discord between the parties herein started, the Respondent-husband transferred the matrimonial home in which the parties herein were residing together, for a paltry sum of Rs.46,00,000/- to two persons namely Mr. Bipin Jani and Mr. Sameer Mehta, who are librarian and Manager (Admin.) respectively of UPL, which is under the control of the Respondent-husband. This is inspite of the fact that, the market value of the said matrimonial home is between Rs.2,00,00,00,000/- to Rs.3,00,00,00,000/-. He submitted that, the Family Court has erroneously rejected this contention by observing that the Petitioner is required to produce the Index-II of the registration document to show the value of the matrimonial home. He submitted that, there is a stark difference between Rs.46,00,000/- and Rs.3,00,00,00,000/-. He submitted that, the Family court has grossly erred in relying upon the Affidavits filed by the employees of the Respondent-husband as his

Constituted Attorney. That, Order XIX of the Code of Civil Procedure, 1908, is clear and only facts known personally to the deponent of the Affidavit can be deposed to by him. That, just as oral evidence can only be direct, so also the evidence on Affidavit should be direct. He submitted that, no source of information is disclosed by the affiant in the present case. He submitted that, substantial evidence produced in the form of cash memos and other documents have been discounted by the Family Court on the ground that the receipts thereof have not been produced. That, if, in the vary nature of this, it is the settled law that, the wife would find it very difficult to produce documentary proof. He submitted that, it is not appreciated as to the basis on which the onus to produce such documents is held to be on the Petitioner-wife. He further submitted that, an interim relief can be granted only in the aid of and as ancillary to, the main relief which may be available to the party on final determination of his rights in a Suit or proceeding. That, if this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that, where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief *ipso facto* the temporary relief of the same nature cannot be granted. In support of his contention, he relief on two decisions of the Supreme Court namely *Cotton Corporation of India Limited Vs. United*

Industrial Bank Limited & Ors. Reported in (1983) 4 SCC 625 and Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services INC. and other connected Petitions reported in (2012) 9 SCC 552.

He submitted that, if the interim maintenance granted by the Trial Court is confirmed by this Court then, at the time of final adjudication of the Marriage Petition as contemplated under Section 37 of the Special Marriage Act, it will cause great difficulty to the Petitioner. He therefore, submitted that, the impugned Order needs to be quashed and set aside by allowing the Application filed below Exh. 40 in its entirety and prayed that, the present Petition may be allowed.

8 Mr. Seervai, the learned senior counsel for the Respondent, at the outset submitted that, the impugned Order dated 30th July, 2018 is being complied with and/or worked out. That, the Respondent-husband is regularly paying the interim maintenance as has been directed by the Family Court to the Petitioner-wife and has paid the said interim maintenance upto December, 2019.

Mr. Seervai, the learned senior counsel submitted that, while interpreting Section 36 of the Special Marriage Act it has to be divided into two parts. That, Part-I of the said Section states that, "*Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for* *her support and the necessary expenses of the proceeding".* And Part-II of the said Section states that, *"it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable."* He submitted that, if the hurdle as envisaged in Part-I of the said Section is crossed by the wife, then only Part-II of the said Section applies, otherwise not. He submitted that, the inquiry as contemplated under Part-I of the said Section is unifocused and is related with the ascertainment of independent income of the wife sufficient for her support to maintain her and the necessary expenses of the proceedings. That, if the answer of the same is '*yes*', then the inquiry must stop there and there only. He submitted that, if the concerned Court answers the Part-I of the said Section in affirmative then, the Court need not dwell upon the Part-II of the said Section at all. He submitted that, the object of Section 36 of the Special Marriage Act, 1954 is to provide temporary financial support pending any action under Chapter V or VI of the said Act to the wife who has no independent income sufficient to maintain herself. To buttress his arguments, he relied on a decision rendered by the learned Single Judge of the Calcutta High Court in the case of *Somdatta Chatterjee nee Raychaudhuri Vs. Anindya Chatterjee* reported in *2019 SCC OnLine Cal 1627.*

He submitted that, this is preciously the finding recorded by the Trial Court in the present case and it needs no interference by this Court while exercising its jurisdiction under Article 227 of the Constitution of India.

Mr. Seervai, learned senior counsel drew my attention to the Income Tax Returns and other related documents produced by the Respondent on record below Exh. 39. He submitted that, the fact that the Petitioner is getting hand-sum dividends from several different leading companies has been suppressed by her from the Trial Court. He submitted that, in the list of dividend received by the Petitioner, at Serial No. 5 on page No. 410 of the Petition, it is stated that, the Petitioner has received dividend from Nirlon Limited. He submitted that, the said Nirlon Limited is a family owned company of the Petitioner and the Petitioner is a majority stake-holder in the said company. That, the said fact has been suppressed by the Petitioner while filing the Application for maintenance below Exh. 40. He painstakingly pointed out all other Income Tax Returns and related documents (page Nos. 408 to 437 of the Petition) and submitted that, the Petitioner is having more than sufficient income for her sustenance and she is not in need of any interim maintenance from the

Respondent. He submitted that, the facts which have been brought on record by the Respondent by producing the said documents, have not been denied by the Petitioner-wife. He further submitted that, the Petitioner had filed a Criminal Complaint for theft of jewelry of Rs.150 crores against the Respondent on 22nd June, 2016. That, the said case is closed vide closure report dated 15th June, 2017 and has been accepted by the concerned Court on 21st June, 2017. He submitted that, the said fact of ownership of Rs.150 crores jewelry of Petitioner itself shows that, the Petitioner is financially affluent and is not dependent upon the Respondent for her bare sustenance during the pendency of the said Marriage Petition. He submitted that, in her Application filed below Exh. 40 (page 312 (iv) to the Petition), the Petitioner has narrated her lifestyle and requirement which is nothing but an exaggerated version and discloses her desire to extract huge amount from the Respondent. He submitted that, in view of the fact of lodgment of the aforestated complaint of theft of jewelry worth of Rs.150 crores, the statement made by the Petitioner in paragraph No. 33 of her Application filed below Exh. 40 that, she has no independent source of income or earning and her mother is financially supporting her is a false statement. He further submitted that, the Petitioner-wife has produced on record a statement showing break-up of expenses which were incurred in the year 2016 for Ms. Rudritara. That, as per the said statement an amount of approximately of Rs.36,54,000/- was incurred for the maintenance and well-being of Ms. Rudritara. He submitted that, in pursuance of impugned Order passed by the Family Court, the Respondent is paying an amount of Rs.60,00,000/- to their daughter Ms. Rudritara, apart from other expenses which are being borne by him.

Mr. Seervai, further submitted that the demand of Petitioner-wife is not only exaggerated but is exorbitant too. It is outrageously absurd and unsustainable in the eyes of law. That, the Petitioner has not denied the facts brought on record by the Respondent by way of documents filed below Exh. 39 and has in fact admitted and accepted the fact that the Petitioner has an approximate income of Rs.1 crore per year. That, the Petitioner lives in a specious bungalow at Pali Hill, Bandra and owns properties in different parts of the country worth hundreds of crores of rupees, as has been more specifically stated in his reply by the Respondent. He submitted that, the Petitioner has suppressed the documents from Court i.e. internal pages of her income tax returns, taxable income and schedule of property thereto. He submitted that, as per the pleading of the Petitioner, if at all she was in dire need of interim alimony, then she would not have filed any Application claiming Rs.6 crores for 15 days summer vacation. Mr. Seervai further submitted that, in pursuance of Order dated 30th January, 2020 passed in Special Leave to Appeal (Crl.) No(s). 3851 of 2017 by the Hon'ble Supreme Court, the Respondent is bound to pay the rent of the residential premises as mentioned therein.

He submitted that, there is nothing wrong with the impugned Order and therefore, interference of this Court in its jurisdiction under Article 227 of the Constitution of India is not necessary. He submitted that, the present Petition is unmeritorious and deserves to be dismissed summarily.

9 Having heard the learned counsel for the respective parties and considered the rival submissions it will be appropriate to first deal with the provisions of Section 36 of the Special Marriage Act which would be relevant for deciding the controversy in the present case.

10 Section 36 of the Special Marriage Act reads as under:-

> *"Where in any proceeding under Chapter V or Chapter VI it appears to the district court that <u>the wife has no independent income sufficient for her support and the necessary expenses of the proceeding,</u> it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable."*
>
> *(Underline emphasis supplied)*

By now, it is well settled principle of law that, it is to be presumed that, each and every word used by the Legislature has been used with an intention and the Courts are bound to give effect to the Legislative intent. The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative. The Courts should therefore, reject that construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision. Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute, is to gather the intention of the Legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the Legislature wholly or in part. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the Legislature. In other words the *'legal meaning'* or *'true meaning'* of the statutory provision. The statute must be read as a whole in its context.

It is now firmly established that, the intention of the legislature must be found by reading the statute as a whole.

11 Section 36 of the Special Marriage Act, 1954 deals with the wife's Application for alimony *pendente lite* before the District Court, seized of the dispute *inter-se* between the parties. The object of Section 36 of the said Act is to provide a temporary support pending any action under Chapter V or VI of the said Act to the wife who has no independent income sufficient to maintain herself. It is an interim measure envisaged by the said Section during the pendency of the dispute *inter-se* between the parties before the concerned Court. A plain reading of Section 36 of the said Act makes it abundantly clear that, it is in two parts. The first part states; *'Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding.'* It is thus clear upon reading the first Part that, the Court on an inquiry solely restricted to the wife's financial condition, must in the first place, be convinced that, the wife does not have sufficient independent income, to be eligible for alimony *pendente lite.* An independent income which is sufficient to support and sustain her and the necessary expenses of the proceedings, ends the inquiry under Section 36. There is nothing further for the Court to

inquire into. If the wife fails to cross the first hurdle, then the wife would not be entitled to demand alimony *pendente lite* from the husband. Therefore, if the wife has an independent source of income, she fails to overcome the hurdle of establishing that she is entitled to receive interim maintenance from the husband.

It is only in a situation where the wife has either no independent income or insufficient independent income then only the second Part of the said Section comes in to fray. The second Part of Section 36 states that; *'it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable.*

Therefore an inquiry by the Court as envisaged by the second Part of Section 36 begins ‘only if and when’ the wife is successful in establishing that, she passes the test envisaged in Part I of the provisions, i.e. she establishes that, she has no independent income or has insufficient income. It is only in that event, the occasion arises for the Court to consider granting alimony *pendente lite* to the wife, the benchmark being the husband's income. On the other hand, if the Court is satisfied from the material available on the record that, the wife has an independent income sufficient to maintain herself, then the

Court ought to dismiss the wife's Application for interim maintenance and any further deliberation thereon in the eligibility of a wife to receive alimony *pendente lite* would be unjustified under Section 36 of the said Act.

In that view of the matter, I find that, the contention of Mr. Seervai with regard to the interpretation of Section 36 of the said Act is proper and deserves to be accepted.

12 The record discloses that, in pursuance of Order dated 30th January, 2020 passed in Special Leave to Appeal (Crl.) No(s).3851 of 2017 by the Hon'ble Supreme Court, the Respondent-husband is bound to pay the rent of the residential premises of the Petitioner. The said rent is independent of interim maintenance which is being paid by the Petitioner. As per the said Order, the arrangement of payment of rent is till the disposal of the pending Divorce Petition and therefore the need of the Petitioner for her residential accommodation has been taken care of.

13 As far as the aspect of the Petitioner's income i.e. no independent income sufficient for her support and the necessary expenses of the proceeding is concerned, it is to be noted here that, the Respondent-husband by way of filing Exh. 39, has brought on record income tax returns and other related documents indicating the income

of the Petitioner. The Trial Court in para Nos. 27 and 28 of the impugned Order has in great detailed analyzed those documents. The Respondent in his Affidavit in reply to the interim maintenance Application filed by the Petitioner, has categorically stated that, the Petitioner is engaged in various business which rendered her huge income. It is also stated that, the Petitioner is 45% owner of the property where she is currently living in i.e. 38, Pali Hill, Mumbai and has various properties worth hundreds of crores of rupees in different parts of the country. It is categorically averred that, the Petitioner is having shares of Nirlon company worth rupees hundred crores and jewelry worth around Rs.200 crores. The said facts have not been denied by the Petitioner and has in fact been admitted without demur. Though the Petitioner has contended that the Respondent is the owner of the property situated at 82, Pali Hill, Bandra, the Respondent has categorically denied the same and has stated that, the said property belongs to his employer i.e. UPL and he occupies the same in his capacity being CEO of the said company. The income tax returns and the documents annexed thereto of the Petitioner, produced on record clearly indicate that, the Petitioner is getting independent income sufficient for her support and the necessary expenses of the proceeding. As noted earlier, it is the Respondent-husband who has brought on record the said documents and the Petitioner in fact has suppressed it from the Court. Even reference to that effect i.e. about independent income of the Petitioner has not been made in her Application filed below Exh.40, claiming interim maintenance. The income of the Petitioner from long term capital which might be either by selling of her shares or sale of immovable property has not been disclosed by her. It further appears that, her share holding in the said Nirlon company has also not been disclosed in the interim Application. The Trial Court in para No. 27 of the impugned Order has observed that, the income tax returns of the Petitioner disclosed that, she had an income of Rs.30 lacs per annum. It is further observed that, the Respondent has not approached the Court with clean hands, to grab excessive amount under the garb of maintenance. That, the real income of the Petitioner has been concealed from the Court.

14 As far as the contention of the learned counsel for the Petitioner that, though the Petitioner called upon the Respondent to produce his income tax returns by filing an Application below Exh. 33, is concerned, it is to be noted here that the said Application is for inspection of income tax returns of the Respondent-husband from the year 2010-2011 till the date of filing of the said Application and not an Application by the Petitioner calling upon the Respondent husband to

produce documents i.e. income tax returns and therefore, the said contention cannot be accepted.

It appears to this Court that, the income of the other family members and/or the profit earned by the said UPL company is being construed and treated as income of the Respondent while claiming interim alimony. The Petitioner herself has averred that, the income of the Respondent is approximately Rs.8 crores to Rs.13 crores per annum and she has claimed interim alimony of Rs.1 crore and 30 lacs for herself and Rs.30 lacs for their daughter Ms. Rudritara. If the contention of the Petitioner is accepted then, the interim alimony would come to Rs.19.20 crores per annum, which would undoubtedly be much more than the total annual earning of the Respondent and therefore, it cannot be granted. It is to be further noted here that the Petitioner till date has failed to prove the fact that, she requires Rs.1.30 crores per month for her support and her sustenance. The Petitioner will have to substantiate her said claim at the time of final adjudication of the marriage petition. It clearly appears that, the claim of the Petitioner for such huge amount towards interim maintenance itself shows her intention to extort money from the Respondent.

15 The record indicates that the Petitioner is an industrialist/ entrepreneur and having substantial stakes in the said Nirlon company

which fact is *prima facie* proved from her income tax returns. As noted earlier, the Petitioner has suppressed those material documents from the Court while claiming interim alimony. The trial Court in para No. 41 of its impugned Order has observed that the Petitioner seeking maintenance, lie blatantly and therefore her Application is liable to be rejected. I find substance in the said observations of the Trial Court.

16 As noted earlier, the Petitioner is having independent income sufficient for her support and the necessary expenses of the proceedings. Despite the said fact, the Trial Court has granted interim maintenance to the tune of Rs.7 lacs per month in favour of the Petitioner and Rs.5 lacs per month in favour of their daughter Rudritara from the date of filing of the said Application till the disposal of the main petition. The said interim maintenance is an added income for the support of the Petitioner and in view of this Court, it need not be further enhanced. The Trial Court, after taking into consideration various aspects and the documents produced by both the sides, has granted the said interim maintenance which according to this Court is not only reasonable but is sufficient too.

17 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329* has enumerated the principles in the exercise of High Court's jurisdiction

under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The aforestated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors., reported in (2015) 5 SCC 423*.

18 After taking into consideration the entire material available on record, this Court is of the considered view that the Trial Court has not committed any error either in law or on facts and the interference by this Court in the impugned Order dated 30th July, 2018 passed by the Family Court, Mumbai is unwarranted.

Petition being devoid of merits, is accordingly dismissed.

In view of dismissal of Petition, Civil Application(s) and Interim Application pending therein, are also disposed off.

(A. S. GADKARI, J.)