

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4634 OF 2019

Sarita Shiv Agarwal	.. Petitioner
Versus	
Shiv Agarwal and anr	.. Respondents

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Mr. J.K. Shah with Shradha Shah for the petitioner.
Mr. Anand Pande i/b Kaushik Mhatre for respondent no.1.
Mr. A.B. Kadam, AGP for respondent no.2.

CORAM: BHARATI DANGRE, J.

DATED : 28th FEBRUARY, 2020.

P.C:-

1 The petitioner wife has challenged the order dated 7th September 2017 passed by the Judge, Family Court, Mumbai on a singular count being that the interim maintenance that has been awarded by the said order is directed to be paid from the date of passing of the order. Learned counsel for the petitioner raises a serious discontent to the maintenance being paid from 7th September 2017 and he would submit that the application on which the order has been passed has been filed on 6th June 2014. The said application being an application under Section 24 of the Hindu Marriage Act, 1955 in the proceedings for divorce in

Petition No. A-30/2014 initiated by the husband seeking dissolution of the marriage solemnized in the year 1999.

2 The Application filed under Section 24 seeking interim maintenance contain an averment that the applicant is the housewife and do not have any independent source of income. She had also stated that her Income Tax returns were filed by her husband. The maintenance has been claimed to the tune of Rs.One lakh for the applicant wife and Rs.50,000/- per month for the two children who at the relevant time, were aged 11 and 14 years. An averment is found in the application that the respondent is a businessman engaged in the business of export; the business activity being carried out in the name and style of 'M/s. S.V.K Impex Pvt.Ltd'. It was averred that the monthly income from the said business is Rs.10 lakhs per month and apart from this, reference was made to his other assets such as office premises on ownership business, the brand new cars purchased by him, Fixed Deposits, investments in Mutual Funds, Shares etc. The application preferred on 6th June 2014 also prayed for the litigation expenses to the tune of Rs.50,000/-.

3 An affidavit in reply was filed to the said application where a specific averment is contained in paragraph C to the following effect :

“Respondent also admitted that Petitioner is giving per month 30,000/- as and by way of expenses, in addition to this the list of documents submitted by the Petitioner before this Hon’ble Court clarifies every minute doubt i.e. Rs.15,000/- per month is given for school and tuition fees the minor children, Rs.18,061/- per month is paid by way of EMI for the flat in which Respondent and the minors are residing at present and Rs.11,800/- is paid by Petitioner for various bill i.e. internet, electricity, phone, society maintenance etc, which amounts to Rs.75,000/- per month. Petitioner being a responsible father and husband is paying above mentioned expenses without order of any Hon’ble Court with direction to that effect and also Petitioner has purchased a car Santro 110 Automatic for minor children and the Respondent by way of providing them comfort”.

4 The Family Court on consideration of the rival claim of the parties and after making reference to the bank statements, LIC Policies, Income Tax returns for the Assessment Years 2013-14, 2015-16, 2016-17, arrived at a conclusion that the income of the respondent was sufficient enough to justify a direction to pay maintenance of Rs.75,000/- per month to the petitioner no.1 and Rs.40,000/- each to both the children.

5 It would be rightful to reproduce the portion of the order :

“The respondent statement that petitioner’s monthly income is Rs.5 lakhs per month can be accepted. The petitioner’s advocate stressed on the Income Tax returns for the year 2015-16. A person earning annual income of Rs.14 lakhs for the year 2015-16 will rarely afford an Audi car, unless he has some other income which is not shown in the income tax returns. The petitioner is paying expenses of Rs.75,000/- per month to the respondent and both the children which in the given situation is on the lessor side to maintain the respondent’s life style commensurating the standard of life which she was habituated in the company of the petitioner. Considering the petitioner’s average income of Rs.5 lakhs per month, the monthly maintenance of Rs.75,000/- per month to the respondent and Rs.40,000/- each per month to both the children i.e. total Rs.1,55,000/- will be just and reasonable till the disposal of this petition. Hence, the order :

ORDER

- 1 *The application is partly allowed.*
- 2 *The petitioner is directed to pay Rs.75,000/- (Rupees Seventy Five Thousand only) per month to the respondent and Rs.40,000/- each i.e. (Rupees Eighty thousand only) per month for both the children, total Rs.1,55,000/- (Rupees One lakh Fifty Thousand only) towards their interim maintenance from the date of this order till disposal of this petition.*
- 3 *Costs to follow final decision.*

6 The petitioner is not contesting the quantum of maintenance but is only aggrieved by the operation of the said order being given effect to from 7th September 2017. Learned counsel for the petitioner would invite my attention to Section 24 of the Hindu Marriage Act 1955 and he would submit that as the Head Note of Section 24 would indicate, it is “Maintenance *pendent lite*” and according to him, the benevolent provision contained in the statute is to save either party in a marriage from the vagrancy and to attend to the necessity of the non-earning spouse. Relying on the language employed in Section 24, learned counsel would submit that whether in any proceedings under the Act it appears to the Court that either the wife or the husband has no independent income sufficient for her or his support and for the necessary expenses of the proceedings and on an application filed, the Court may order payment of the expenses of proceedings and such sum as having regard to the petitioner’s own income and the income of the respondent on a monthly basis as the Court deem it to be reasonable. A proviso inserted to the said Section in the year 2001 contemplated the proceedings to be disposed of preferably within 60 days from the date of service of notice on the wife or husband as the case may be. According to the learned counsel when the maintenance contemplated under Section 24 is pending the main application, it necessarily must yield the results and the maintenance must start flowing from the

date of the application since the object of the said section is to confer the means of sustenance of either parties to the marriage who is not able to maintain himself/herself. He would thus submit that taking into account the object and the purpose for which the provision has been incorporated and the same being a beneficial one, it must be construed in a wider sense and by applying the rule of purposive construction, the benefit must flow from the date of the application.

7 The learned counsel has placed reliance on the judgment of a Single Judge in the High Court of Allahabad as also the judgment in the case of Sarmistha Chakraborty Vs. Abhijit Chakraborty by the Calcutta High Court. By relying on the said judgments, the submission that is advanced is to the effect that the said provision must be given effect to with its true intent and therefore, the Family Court has fallen into a grave error in restricting the amount of maintenance from the date of the order passed by it instead of extending it from the date on which the application was made and in particular when a specific averment is contained in the Writ Petition that in order to sustain herself and to maintain her children, she was required to borrow the money and keep the wheels of her own life and that of her children moving.

8 Per contra, the learned counsel for the respondent relying on the affidavit in reply and the supporting document in form of the statement of account from the Banks submit that he has been depositing an amount of Rs.30,000/- in the account of the petitioner from the year 2013. The statement of accounts is also annexed along with the affidavit in reply. Apart from this, he has also placed on record the amount being paid by him towards the EMIs for the residential premises in which the couple had settled themselves and which according to the respondent, is presently occupied by the petitioner and the two children. Receipt reflecting an amount of Rs.17,000/- being credited to the Society as quarterly maintenance has also been placed on record. Learned counsel would go further and rely on the documents reflecting purchase of a Motor Vehicle in the interregnum period when the application was pending and that according to him, has gone to the wife. Reliance is also placed on the amount borne by him for a foreign tour of his wife during the pendency of the application.

9 Relying on the aforesaid documents, the submission of the learned counsel is to the effect that in absence of the order from the Court he was already catering to the financial requirements of his family i.e. his wife and two minor children and he has never shirked the responsibility. He would submit that an amount of Rs.30,000/- being monthly paid towards the

maintenance plus the house being permitted to be occupied without any responsibility of the EMI being borne by her and all miscellaneous expenses being catered to, this is not the case where it can be said that he had left the wife and children to be destitute. The submission of the learned counsel is to the effect that the position of law as enunciated through the decisions on which the learned counsel for the petitioners has placed reliance may not be in dispute but the Court would also have to take into consideration the factual matrix of every individual matter and he would ultimately submit that the family Court being conscious of the aforesaid factual scenario has rightly passed the order directing the maintenance to be paid from the date of the order and not from the date of application.

10 On consideration of the rival contentions of the parties and on perusal of the impugned order as well as the supporting documents supporting the application and the counter affidavit filed by the respondent, demonstrating that there was no failure on part of the respondent husband to discharge his liability, the provision of Section 24 under which the order has been passed would have to be construed. There cannot be any doubt in my mind that Section 24 of the Hindu Marriage Act is a benign provision and it is in the nature of maintenance “pending proceedings” and ensuring the expenses of the proceedings. Whenever in any proceedings are instituted by either party to a

Hindu Marriage under the Hindu Marriage Act, 1955, a party approach the Court drawing the Court's attention to the fact that he/she is not able to maintain himself/herself and by drawing the attention of the Court to the income of the other side and her own income and that the income is not sufficient for her support and to bear the necessary expenses, the Court may pass the necessary order as it deems fit.

11 The underlying purpose of the said provision being to enable the party to fight the litigation but at the same time, to be not left destitute and devoid of any sources and means of sustenance and bearing the expenses for the litigation as contrasted against the other side which has sufficient income, the expenses for living on monthly basis would be then directed to be paid. The placement of the said Section if juxtapose against Section 25 which deals with 'permanent alimony' and maintenance would reveal that the powers under Section 25 would be exercised by any Court exercising jurisdiction if at the time of passing any decree or at any point subsequent thereto on an application being made, an amount is claimed for maintenance and support of a party, the Court may pass such orders for securing the payment or by creating a charge on the immovable property on the other side. The provision also permit the Court to have a variation in the said order which it had passed by either varying modifying re-signing it partly. In comparison to said

section which deals with relief in form of permanent alimony and maintenance after the proceedings are over, Section 24 is restricted to the pendency of the proceedings.

12 In the case in hand, the application was filed on 6th June 2014 and it came to be decided on 7th September 2017. The Family Court has carefully construed the averments of the parties and by taking into consideration the factum that the respondent is bearing the expenses of the wife and the children and considering the lavish life style of the parties specifically the husband as pleaded in the application, commensurating to his statement has directed the husband to pay maintenance of Rs.75,000/- to the wife and Rs.40,000/- to both the children i.e. total sum of Rs.1,55,000/- per month.

13 No case has been made out by the petitioner to establish that during the pendency of the said application before the Family Court seeking interim maintenance she was not being taken care of by the husband. Keeping in mind the spirit of the provision i.e. Section 24 of the Hindu Marriage Act to which I have already made a reference, in absence of the wife and children being not catered to and on the contrary when the respondent has established that he was paying the amount regularly and which is reflected a from the statement of account and to this assertion there is no denial. The family court was perfectly justified in my

considered opinion in not allowing the application from the date of its filing but had deliberately made the order operational from the date of passing of the order.

14 In such circumstances, there being no legal infirmity or factual infirmity in the impugned order, the same do not warrant any interference. By upholding the order dated 7th September 2017, Writ Petition is dismissed.

SMT. BHARATI DANGRE, J