

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.957 OF 2020**

Hemant D. Kharkar .. Petitioner

Vs.

Mrs. Vrushali H. Kharkar .. Respondent

...

Mr. Mahesh Joshi for the Petitioner.

Mr. R.T. Lalwani with S. Lalwani i/b Prakash Mahadik for the Respondent.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 06TH MARCH, 2020.

P.C:-

1. Through the present Writ Petition, the Petitioner-husband raises a challenge to Order dated 24/07/2019 passed by the Joint Civil Judge, Senior Division, Pune at Vadgaon, Maval.

2. The Petitioner is aggrieved by the said order on two counts; first being it directs that the interim maintenance be paid from the date of the Application i.e. from 23/01/2018 and the second ground being that the Court while directing him to pay

maintenance at the rate of Rs.7,000/- per month, did not take into consideration that he is not employed and do not possess the financial capacity to pay the maintenance.

3. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

4. The counsel for the Petitioner submits that the Application seeking interim maintenance was filed in a proceeding filed by him seeking dissolution of marriage in the year 2017. The Application under Section 24 of the Hindu Marriage Act is filed by the Respondent-wife on 23/01/2018 where she claimed maintenance to the tune of Rs.20,000/- and also prayed for payment of litigation expenses of Rs.30,000/- so as to enable her to bear the expenses of the litigation instituted by the Petitioner-husband. The Application proceeds on the basis that the Petitioner-husband is working in Tech Mahindra and is drawing salary of Rs.60,000/- per month and, considering the earnings of the husband, maintenance of Rs.20,000/- has been claimed.

5. The Application is filed under Section 24 of the Hindu Marriage Act which contained a provision "Maintenance pendente lite and the expenses of the proceedings". Bare perusal of the said provision reveals that the said provision is intended to save either party to a marriage from being rendered a destitute

when the proceedings are instituted under the Hindu Marriage Act and, taking into consideration the earnings of either side and the requirement of the opposite side, the Court may award maintenance as it deems fit. The said provision being a beneficial one, needs to be construed liberally and in favour of a party who approaches the Court seeking assistance of the Court during the pendency of the proceedings instituted by the other side. The fact that the Application has been served on the Petitioner-husband on 07/02/2019 would not make any difference. Since the circumstances stated in the Application instituted on 23/01/2018 continue to exist and since the provision is a benevolent one, granting maintenance to either party during the pendency of the proceedings, from the day when such an Application is instituted claiming maintenance pending the proceedings, the Court ought to have granted the same from the date of Application as the order to be passed on the said Application is an order granting interim maintenance and to tackle/deal with the impoverished state and the destitute situation of either of the parties. Hence, the ground that the Application has been served on the Petitioner on 07/2/2019 though the Application under Section 24 was filed on 23/01/2018 and, therefore, the Court was not justified in granting the interim maintenance from the date of the Application do not merit any consideration.

6. As far as the liability fastened on the Petitioner and, that

too, to the extent of Rs.7,000/- per month to be paid to the Respondent-wife, learned counsel would urge the Court has not taken into consideration the earning capacity of the Petitioner-husband. Learned counsel for the Petitioner has relied upon a Petition filed by the Respondent-wife seeking restitution of conjugal rights where she herself has admitted that in the year 2017, the Petitioner has lost his job. The Petitioner, therefore, submits that in absence of any material being brought on record that he is continuing in the employment of Tech Mahindra and particularly in light of the response which he has filed to the Application of the Respondent-wife denying the said averments, the burden to shift on the Respondent-wife to establish his earning.

7. It is to be noted that the Family Court proceeded on the footing that the Petitioner is earning Rs.60,000/- per month but has also recorded that the salary certificate is not on record.

8. The Court has taken into consideration the fact that the Petitioner was working in TQuanta Technologies, and this Company was closed down in the year 2017. Taking the assertion of the Petitioner from his Reply to the Application where he has stated that the Company was closed down and, thereafter he was required to take some job on temporary basis in Pune, which the Court has accepted but did not consider the fact that he had left

that job also. Considering that while working in the earlier Company, the Petitioner was securing an amount of Rs.60,000/- per month then surely, when he has taken up a temporary employment, he will work less for a job which gives him a petty yield and, therefore, considering that he is expected to get more or less the same salary which he was getting in the earlier employment, the Court has recorded that he is educated, able bodied person and can easily maintain himself and further recorded that in any case, it is his responsibility to maintain his wife. The Court did not proceed on the assumption that the Petitioner-husband is working in Tech Mahindra and is earning Rs.60,000/-. It has taken into consideration that the Company in which he was working and earning Rs.60,000/- is closed down and, thereafter, he has taken up a temporary job in Pune, the court proceeded to fix the responsibility of maintenance of Rs.7,000/- to be paid to the wife.

9. Another contention of learned counsel for the Petitioner is that the Respondent-wife has not shown what are her earnings though she is also educated, able bodied and therefore must earn for herself. There can be no quarrel about the said proposition that she must earn for herself but, in any contingencies on the basis of whatever her earnings are, that may not be sufficient for her to lead a life of the standard which her husband is leading or which she was earlier leading in the marital relation. Grant of an

amount of Rs.7,000/- per month will assist her in maintaining the said standard and therefore the impugned order strikes a balance between the obligation of the Petitioner and the entitlement of the wife and the Family Court has rightly awarded the said maintenance.

10. The Petition does not deserve any consideration. The same is dismissed by upholding the impugned order.

[SMT. BHARATI DANGRE, J.]