

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 573 of 2019

Prasad Yashwant Sawant	.. Petitioner
Versus	
Bharti Prasad Sawant	.. Respondent

...

Mr. Mohan Pillai i/b Madhavi Pillai for the petitioner.
Mr. Sagar Ambedkar with Ms.Shriya Gune for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 5th MARCH 2020

P.C:-

- 1 Heard learned counsel for the petitioner.

- 2 The petitioner is aggrieved by the order dated 4th September 2018 passed by the Family Court No.4, Mumbai, an order passed on an interim application seeking maintenance by the wife. The learned counsel would submit that he do not have any quarrel about his responsibility to maintain the respondent wife but he is before the Court only questioning the quantum of maintenance i.e. an amount of Rs.40,000/- being directed to be paid without taking into consideration his earning and other liabilities i.e. maintenance of his daughter from the first marriage and catering to the medical need of his aged parents.

Tilak

3 The impugned order record that the petitioner is working with Shipping Company as a Captain. The contention of the wife is recorded to the effect that he is earning Rs.Four lakhs per month and there is no member of the family dependent on him. She therefore, claimed maintenance to the tune of Rs.1,50,000/- per month. In contrast to the said claim, the petitioner husband had filed a reply and denied that he has the said earning capacity. He specifically averred that he has no permanent employment and he works on contract basis for four to five months only in an year and his average earnings thus come to around 16 to 20 lakhs per year and his monthly income varies somewhere between Rs.1,32,000/- to Rs.1,60,000/-.

4 The Family Court had before it the salary slips of the husband for the month of November 2017, December 2017 and January 2018. The salary reflected in the said salary slips was 6,641.00\$, 11292.00\$, and 15943.00\$ for the respective months. The husband specifically pleaded before the Court that he is jobless. The Judge, Family Court accepted that the parents of the petitioner require medical attendance. It also considered the fact that he has to bear 50% Educational expenses of his daughter born from the first marriage in accordance with the consent terms filed in a petition and by giving due weightage to the said factors arrived at a conclusion that considering the reasonable

requirements of the wife and the upkeep of the husband an amount of Rs.40,000/- per month would be sufficient and has awarded the said amount towards maintenance of the wife.

5 Learned counsel for the petitioner submits that he had approached the Court with clear intention and had honestly placed before the Court the salary slips for 3 months reflecting his true income but according to him what has not been considered by the Family Court is that the earnings reflected in the salary slips do not run throughout the year and being in a shipping company, his services are engaged varying from 5 – 7 months in a year. In those months where his services are not engaged he is not paid any salary. Therefore, taking into consideration the statement that he clearly made in his reply that earnings come to Rs.16 to 20 lakhs per year and monthly earning somewhere between Rs.1,30,000/- to Rs.1,60,000/-, he covered those months where he has earnings.

6 Unfortunately, the evidence which should have been brought before the Court in a positive manner by showing an yearly statement of earnings or the amount being deposited into his bank account which would have been reflected his annual income or the Income tax return which could have reflected his annual earnings was not placed before the Family Court. Discounting the contention of the petitioner to the effect that

being with a shipping company, his services are not engaged throughout the year and he is laid back in some of the months, the necessary evidence ought to have been placed before the Court.

7 The said required evidence and material not being placed before the Court therefore, calls for one opportunity to be afforded to the petitioner to demonstrate the nature of his employment by remitting the matter back to the Family Court. This however is to be allowed only after the petitioner clear the arrears of maintenance upto February 2020 at the rate of Rs.40,000/- per month as directed by the impugned order to be paid from 27/9/2017 i.e. date of the application. Learned counsel for the petitioner agree to the said proposition and submit that he is ready and willing to deposit the amount of maintenance due and payable till February 2020, however, he should be granted some time to do so. On the amount of maintenance being paid in terms of the order dated 4/9/2018 an entire arrears being cleared within a period of six weeks from today, the petitioner is relegated back to the Family Court for consideration of the amount of maintenance and the Family Court is directed to afford an opportunity to the petitioner to demonstrate his annual earnings, his expenses and if the Family Court is satisfied that he do not have a monthly income, the Court would then take into account his annual income pitched against the expenses which he has to incur in form of a liability. On such a

deposit in the Family Court being made, respondent is permitted to withdraw the same. On such an exercise being carried out within a period of three weeks from the date of passing of the order, the Family Court would either affirm the order passed by it on 4th September 2008 or suitably modify the said order by taking into account the evidence which would be placed before it by contesting the parties.

8 With the aforesaid direction, Writ Petition is partly allowed by remanding the matter to the Family Court.

9 No order as to costs.

SMT. BHARATI DANGRE, J