

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 6225 of 2019
Surendra Gaikwad
Vs.
Asha Gaikwad

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.S. Bagga h/f Mr. Amit Khare, Advocate for the petitioner
Mr. R.S. Sardey, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 14, 2020

By this writ petition, the petitioner (husband) has challenged order dated 02/08/2019, passed by the Civil Judge (Senior Division), Gondia, whereby application for interim maintenance filed by the respondent (wife) has been partly allowed and the petitioner has been directed to pay interim maintenance of Rs.7,000/- per month.

2. The parties got married on 30/05/2006 and there is a girl child out of the wedlock.

3. The respondent filed Hindu Marriage Petition No.14/2019, before the Court below seeking divorce under Section 13(1)(ia) (ib) of the Hindu Marriage Act, 1955. In the said petition, the respondent moved application for grant of interim maintenance under Section 24 of the aforesaid Act.

4. By the impugned order, by analysis of material available on record, the Court below came to a conclusion that direction to pay Rs.7,000/- per month towards interim maintenance to the petitioner would be reasonable.

5. Aggrieved by the said order, the petitioner filed the present writ petition in which notice was issued on 13/09/2019 and ad-interim order was granted in favour of the petitioner on the condition that he shall deposit Rs.60,000/- with the Registry of this Court by 04/10/2019. It was further clarified that if the petitioner failed to deposit the said amount within stipulated period of time, the interim order shall cease to operate.

6. It is an admitted position that the petitioner failed to deposit the said amount in the stipulated time and even today no amount was deposited in pursuance of the aforesaid order dated 13/09/2019. It was pointed out by the learned counsel appearing for the petitioner that application for modification of order dated 13/09/2019, was filed in this Court on 05/10/2019, whereby a request was made that installments may be granted to the petitioner to deposit the said amount. The said application has been pending for orders in the present writ petition.

7. Instead of taking up the application for consideration, the writ petition itself was heard by this Court. It was contended on behalf of the petitioner that the impugned order passed by the Court below was unsustainable because no material was available on record in so far as the income of the petitioner was concerned. It was submitted that certain documents showing filing of income tax returns of the respondent were on record and this aspect was ignored by the Court below while passing impugned order.

8. On the other hand, the learned counsel appearing for the respondent submitted that the direction towards interim maintenance granted by the Court below by the impugned order was reasonable in the facts and circumstances of the present case, particularly when the girl child is admittedly residing with the respondent herein.

9. This Court has heard learned counsel appearing for rival parties and perused the impugned order. When the Court is considering the question of grant of interim maintenance, it has to proceed on the basis of material filed at that stage. In the present case, although the petitioner has emphasized on the income tax returns filed by the respondent, he has not come clean on his own income through professional activities. Although it is denied by the petitioner that he is a Chartered Accountant, it is conceded that he is

having qualification of M.A., L.L.B. and he has been practicing on income tax side as professional. If that be so, it was incumbent upon the petitioner to have come clean before the Court below or this Court to show material as regards his monthly income. Having failed to do so, this Court does not find any error committed by the Court below in the proceedings on the basis that grant of interim maintenance of Rs.7,000/- per month to the respondent would be reasonable.

10. Apart from this, it is an undisputed fact that the only child through the wedlock i.e. girl child, who is now about 14 years is residing with her mother i.e. respondent. Expenses of a 14 years old child can also to be considerable and as a father of the child, the petitioner has a duty to pay monthly maintenance expenses not only to the respondent, but also to the said girl child. In these circumstances, this Court finds no reason to interfere in the impugned order passed by the Court below.

11. Accordingly, the writ petition is dismissed.

JUDGE