

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

**WRIT PETITION NO. 6340 OF 2019**

Sou. Bharti w/o Dinesh Fulbandhe

vs.

Shri. Dinesh s/o Subhash Fulbandhe

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Office Notes, Office Memorandum of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri. A. N. Ansari, counsel for petitioner.  
Shri. Sumedh Kadam, counsel for respondent.  
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**CORAM : MANISH PITALE J.**

**DATED : 22/01/2020**

By this writ petition, the petitioner has challenged order dated 25/09/2017, passed by the Court of Civil Judge Senior Division, Bhandara, whereby an application filed by the respondent under Section 24 of the Hindu Marriage Act 1955 has been partly allowed and the petitioner has been directed to pay interim maintenance of Rs.3000/- p.m. to the respondent from the date of order.

2. The petitioner and the respondent got married to each other and due to differences between them, matrimonial disputes arose. The respondent had filed an application for restitution of conjugal rights, wherein applications were filed by both parties under Section 24 of the aforesaid Act claiming interim maintenance. By an order dated 01/02/2016, the Court of Civil Judge Senior Division, Gondia rejected both the applications.

3. The petitioner filed divorce petition against the respondent bearing H.M.P. No.116/2016 and in this proceeding also the parties filed applications for interim maintenance under Section 24 of the said Act. By the impugned order, the application filed by the respondent (husband) has been partly allowed, while the application filed by the petitioner (wife) is still pending before the Court below.

4. The learned counsel appearing for the petitioner submitted that the Court below committed an error in failing to decide both the applications together. It was submitted that according to the petitioner, the respondent does have a source of income in the form of a barber shop and certain agricultural land from which he has regular income. It is submitted that the Court below did not appreciate this aspect to the matter and only because on the date the impugned order was passed, neither the petitioner, nor her counsel could appear, that the Court below proceeded to pass the impugned order on the basis of the material available on record. It is submitted that even the material available on record was not appreciated in the correct perspective, because the claim of the respondent that he was mentally and physically unfit was not supported by any material on record, while the respondent only relied upon the pay slip of the petitioner, who is qualified as a Nurse and is working on honorarium.

5. On the other hand, the learned counsel

appearing for the respondent submitted that he has no source of income as on today and that there is material to show that he is undergoing treatment for mental illness.

6. A perusal of the impugned order shows that the Court below has proceeded to partly allow the application filed by the respondent; only on the basis of a pay slip of the petitioner placed on record which purportedly shows her monthly income to be Rs.11,773/-. Although respondent claimed that he was mentally and physically unfit to work, no material was placed on record in support of the said contention.

7. In such a situation, it would have been appropriate for the Court below to have considered the application of the petitioner under Section 24 of the aforesaid Act for grant of interim maintenance along with application filed by the respondent. The Court below could have directed the respondent to produce material on record to support his contentions and failure on the part of the respondent could have drawn adverse inference. But the Court below simply proceeded on the basis of pay slip produced by the respondent, claiming that the said pay slip was a proof of the monthly income of the petitioner. No enquiry was made as to whether the respondent has any source of income and if so, what would be its implication on the quantum of interim maintenance to be granted to either party.

8. In view of the above, this Court finds that the impugned order cannot be sustained.

9. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside. The Court below is directed to consider the application afresh filed by the respondent seeking interim maintenance. The Court below is further directed to take into consideration application filed by the respondent along with application filed by the petitioner for grant of interim maintenance. The parties are granted liberty to place on record such material as may be relevant in support their respective stands. The Court below is directed to take into consideration the said material and to decide both the applications together in the interest of justice. The applications filed by the parties be decided by the Court below within a period of **six weeks** from today.

10. Since the order passed by the Court of Civil Judge Senior Division, Bhandara is found to be unsustainable and it is set aside, consequently, the judgment and order dated 24/07/2019, passed by the District Court Bhandara dismissing the appeal of the petitioner is also quashed and set aside.

11. Writ petition is disposed of. No order as to costs.

**JUDGE**