

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

Writ Petition No.4481 of 2016
Mahesh Matey Vs. Sarika Matey

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

Court's or Judge's orders

Ms. M.P. Munshi, Advocate for the petitioner
Mr. Abhijit Deshpande, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 28, 2020

By this writ petition, the petitioner has challenged order 29/06/2015, passed by the Court of Civil Judge (Senior Division), Wardha, whereby application at Exh.12, filed by the respondent for interim maintenance for herself and her daughter has been partly allowed. A further direction has been given in the impugned order restraining the petitioner from dispossessing the petitioner from the flat that she is residing in with her daughter at Navi Mumbai.

2. The petitioner has filed a divorce petition against the respondent alleging cruelty and other grounds. It is pending before the Court below. In the pending proceeding, the respondent moved an application at Exh.12, seeking maintenance *pendente lite* for herself and the daughter. It was stated in the said application that the respondent was earning Rs.15,000/- to Rs.20,000/- per month from a private

job and it was very difficult for her and her daughter to survive in such meager amount. It was submitted that the petitioner was earning about Rs.50,000/- per month. In the reply filed on behalf of the petitioner, the said figure of Rs.50,000/- was denied although no material or details were placed on record as to the monthly earning of the petitioner.

3. In this situation, on the basis of material available on record, the Court below passed the impugned order dated 29/06/2015, coming to a conclusion that since the respondent was earning, she would not be entitled to grant of maintenance, but, the petitioner as the father of the said daughter was morally and legally bound to pay maintenance. On the basis of available material on record, the Court below directed the petitioner to pay Rs.7,000/- per month to the respondent for the maintenance of daughter from 17/04/2014, till decision in the main divorce petition.

4. When this writ petition was filed before this Court ,notice was issued for final disposal and this Court granted stay of the impugned order passed by the Court below by recording the statement that an amount of Rs.28,000/- towards maintenance of applicant had been deposited.

5. The learned counsel appearing for the petitioner submitted that the order passed by the Court

below was unsustainable because it was wrongly recorded that the petitioner had not denied in response to the said application filed by the respondent that he was earning Rs.50,000/- per month. Attention of this Court was invited to the reply to demonstrate the error committed by the Court below. It was further submitted that direction No.4 granted in the impugned order was wholly uncalled for because the petitioner never intended to dispossess the respondent and daughter from flat at Navi Mumbai. It was further submitted that the petitioner had also filed an application for declaration and permanent injunction against the respondent, which ought to have been considered by the Court below along with application at Exh.12. It was further submitted that the petitioner is now residing at Wardha and that he is unemployed and that the impugned order is required to be interfered with.

6. On the other hand, the learned counsel appearing for the respondent submitted that although the respondent denied maintenance and the application was allowed only to the extent of grant of maintenance to the daughter, the respondent had not challenged the said order. It was submitted that the respondent had come clean before the Court below by specifically stating that she was earning Rs.15,000/- to Rs.20,000/- per month, while the petitioner did not place on record any details of his earning other than

merely denying his earning at Rs.50,000/- per month. It was further submitted that the petitioner, as the father of the child, has a bounden duty to pay for the maintenance of the child and, therefore, the impugned order does not deserve any interference.

7. Having heard the learned counsel appearing for the parties and upon perusal of the impugned order passed by the Court below, this Court is of the opinion that in the facts and circumstances of the present case and the nature of material before the Court below when the impugned order was passed, no fault can be found with the findings rendered by the Court below. The Court below applied its mind to the material on record to come to a conclusion that the respondent herself does not deserve any amount of maintenance, although it was found that a reasonable amount of Rs.7,000/- was required to be paid by the petitioner to the daughter, who at that time was about 7 years old. Even now the child is about 11 years old and she is a school going child and, therefore, circumstances have not changed in any manner. The only circumstance on which the learned counsel appearing for the petitioner has emphasized is that the petitioner has allegedly lost his job and that now he is residing at Wardha. There is nothing on record to support such statement and in any case, it cannot be denied that the petitioner as father of the said child, has a moral and legal responsibility to provide for a basic minimum amount

towards maintenance of the child. In the present case, direction No.4 given in the impugned order was proposed due to apprehension expressed by the respondent that she would be dispossessed from the flat at Navi Mumbai and, therefore, no fault can be found with the Court below in having given the said direction, in addition to the direction to pay the aforesaid amount of maintenance to the daughter.

8. It is informed by the learned counsel for the respondent that till date other than deposit amount of Rs.28,000/-, no further amount has been deposited or paid by the petitioner to the daughter. In the facts and circumstances of the present case, this Court is of the opinion that the impugned order does not deserve interference. At the same time, reasonable period needs to be granted to the petitioner to pay arrears of the said maintenance amount, since this Court had granted stay to the impugned order.

9. In view of the above, it is found that there is no merit in the present writ petition and accordingly, it is dismissed.

10. The petitioner is granted time till 30th April, 2020, to clear entire arrears in terms of the directions given by the Court below towards payment of maintenance to the daughter. The petitioner shall pay maintenance as directed by the Court below from

February 2020 onwards.

11. As regards grievance of the petitioner that the application for declaration and injunction filed on behalf of the petitioner was not decided, the Court below is directed to take up the application immediately for consideration and orders. The parties are granted opportunity to file appropriate applications in the pending proceedings before the Court below in respect of any grievance that they may have regarding custody of child or visitation rights.

12. Needless to say, in case of failure on the part of the petitioner to pay arrears in the aforesaid period of time, liberty is reserved for the respondent to execute the order. The parties are also at liberty to explore the possibility of settlement, including divorce by mutual consent, before the Court below.

JUDGE