

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7788 OF 2020

Nagnath s/o Ramchandra Mutteparwar

Petitioner

Versus

Sadhana w/o Nagnath Mutteparwar

Respondent

Mr. G.N. Kulkarni, Advocate for the petitioner.

Mr. D.K. Kulkarni, Advocate for the respondent.

CORAM : M.G. SEWLIKAR, J.

DATE : 8th July, 2021.

PER COURT :

1. By this petition under Article 227 of the Constitution of India, the petitioner is assailing the order dated 8th October, 2020 passed by the learned Family Court below Exhibit 16/A in Petition No. P.A.-209/2018, by which, the learned Family Court has directed the petitioner to pay an amount of Rs. 20,000/- per month as maintenance pendente lite.

2. Facts leading to this petition are that the petitioner and respondent tied a nuptial knot on 31st May, 1985. Now, the petitioner is 65 years of age and the respondent is 54 years of age. Till 2013, married life between the petitioner and the respondent was good.

Therefore, their relations were strained. Thereafter, petitioner filed petition for divorce under Section 13(1)(b) of Hindu Marriage Act.

3. Respondent-wife appeared and resisted the petition by filing written statement. She admitted the marriage but denied all the other allegations. She filed application for maintenance pendente lite at Exhibit 16/A. In this application she contended that she is suffering from Cancer and is taking treatment from Dr. Satarkar. She has to incur Rs. 10,000/- towards medical expenses. She has undergone surgery of Cataract for both the eyes for which she had to take Rs.35,000/- on loan. It is her contention in the application that petitioner-husband earns Rs. 3,00,000/- per month and therefore, he can very well pay Rs. 50,000/- per month as maintenance. She has, therefore, prayed for maintenance of Rs. 50,000/- per month and Rs.20,000/- as cost of the litigation.

4. Petitioner-husband filed say to application at Exhibit 16/A. He denied all the allegations against him. He contended that both the sons are living with the respondent-wife and both of them earn Rs.60,000/- per month. He has to spend Rs. 3,000/- on medicines. He has nowhere denied that his income is Rs.3,00,000/- per month.

He stated that he is not in a position to pay maintenance to the respondent-wife. He, therefore, prayed for rejection of the application.

5. After hearing both the sides, the learned Family Court, by order dated 8th October, 2020, allowed the application and awarded maintenance pendente lite at Rs. 20,000/- per month. This order is impugned in this petition.

6. Heard Shri Girish Kulkarni, learned counsel for the petitioner and Shri D.K. Kulkarni, learned counsel for the respondent.

7. Learned counsel Shri Girish Kulkarni argued that younger son aged 27 years is now living with the petitioner whereas elder son aged 35 years is living with the respondent. He submits that the learned Family Court has erroneously awarded maintenance at the rate of Rs. 20,000/- per month. He argued that the income tax returns filed by the petitioner show that the income of the petitioner for the year 2018-2019 was Rs. 2,55,000/-. The learned Family Court has granted Rs. 20,000/- per month as maintenance

which means total amount of maintenance is Rs.2,40,000/- per annum. He submits that the amount of maintenance is unjust. Rs. 2,55,000/- will have to be utilised for payment of maintenance. He submits that if the petitioner is required to pay Rs. 2,40,000/- per annum, it is as good as paying the entire profit of the year to the respondent. He further submits that the amount of maintenance has to be fixed keeping in view the earnings of the petitioner. He further submits that in the year 2019-2020, income from Row House was shown as Rs. 5,10,000/-. On the basis of this income, the learned Family Court has awarded maintenance of Rs. 20,000/- per month. This income from Row House is a one time income. Therefore, the learned Family Court ought not to have considered this income. He submits that the impugned order, for this reason, deserves to be set aside.

8. Learned counsel Shri D.K. Kulkarni submits that the petitioner has sufficient income. He states that his income in the year 2018-2019 was Rs. 26,00,000/-. He has income from other sources also. Therefore, petitioner can easily pay the amount of Rs. 20,000/- per month. He submits that the respondent is undergoing treatment for Cancer. She has to spend huge amount on

her treatment. He, therefore, submitted that the petition deserves to be dismissed.

9. Petitioner has produced Proprietor's Capital Account for the year ending on 31st March, 2019. It shows that Opening Balance of the account was Rs. 58,45,268.54. Net Profit was Rs.2,55,662.84. Income from Row House was Rs. 5,10,000/-. This shows that Net Profit for the year ended on 31st March, 2019 was Rs. 2,55,662.84. Balance Sheet of petitioner's business is placed on record. It shows that Investment and Deposits of petitioner was Rs. 6,38,655/-. It further shows that Cash-in-Hand was Rs. 20,55,153.48. Petitioner has Fixed Assets amounting to Rs. 31,72,887.07. This clearly shows that petitioner was having almost Rs.27,00,000/- towards Cash-in-Hand. On this background, the contention of learned counsel for the petitioner that his net profit was only Rs. 2,55,000/- and on that basis maintenance amount ought to have been awarded cannot be considered.

10. It is true that because of pandemic everyone has received a set back. Naturally, petitioner must also have received a set back. However, it cannot be denied that respondent is suffering from

Cancer and she is required to spend some amount for her treatment. She has not produced any documentary evidence in support of her contention that she has to spend Rs. 10,000/- per month for her treatment. However, it cannot be denied that she must be spending some amount for her treatment. Therefore, considering the income of the petitioner, I do not think that the learned Family Court has committed any error in awarding the amount of maintenance. In this view of the matter, writ petition is bereft of any merit and deserves to be dismissed.

11. At this stage, learned counsel for the petitioner has made a request that the trial pending before the Family Court be expedited. He submits that petitioner is under cross-examination. It will be in the fitness of things if the learned Family Court is directed to dispose of the petition for divorce in a time bound manner. Learned counsel for respondent has no objection for the same. In view of this, writ petition is dismissed. The learned Family Court shall expedite trial of Petition No. P.A-209/2018 and shall dispose it off within a period of six months from today.

12. Petitioner to pay Rs. 5,000/- to the respondent as cost of this petition.

(M. G. SEWLIKAR)
Judge

dyb