

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6605 OF 2021

LALIT UDAY NAIK

....PETITIONER

V/s

SAYALI LALIT NAIK @ MISS. AMRUTA
NITIN JOSHI

.....RESPONDENT

**WITH
WRIT PETITION NO. 2394 OF 2021**

MRS. SAYALI LALIT NAIK

....PETITIONER

V/S.

MR. LALIT UDAY NAIK

....RESPONDENT

Ms. Seema Sarnaik i/b Shreyas Adyanathaya for petitioner in
WP 6605/2021 and for respondent in WP 2394/2021
Mr. Amol B. Jagtap for respondent in WP 6605/2021 and for
petitioner in WP 2394/2021

CORAM : NITIN W. SAMBRE, J.

DATE : NOVEMBER 23, 2021

P.C.:-

1] Parties hereto got married on 13/07/2016 and it is claimed that
son Advik was born on 09/07/2017.

2] Before birth of son, it is claimed that parties got separated in

November 2016 and proceedings being Marriage Petition No. 960/2017 was initiated by the petitioner-husband herein for divorce whereas at the behest of respondent-wife herein, I am informed that proceedings for restitution of conjugal rights are pending. Other factual matrix viz. Petitioner is working as software engineer, before marriage, respondent-wife was working as intern and death of parents of respondent-wife are not disputed facts.

3] In divorce proceedings initiated at the behest of respondent-wife, Exh. 14 came to be moved seeking maintenance of Rs. 100000/- for herself and her child which came to be allowed vide impugned order dated 12/03/2020. Petitioner-husband has questioned the said order on the ground that wife and son both are not entitled for maintenance whereas Writ Petition No. 2394/2021 is taken out by wife seeking enhanced maintenance.

4] Heard respective counsel.

5] Ms. Seema Sarnaik appearing for respondent would urge that parties to the petition are at obligation to disclose their source of income and quantum of income. According to her, respondent-wife failed to place on record her independent sources of income. That

being so, order of award of maintenance ought not to have been passed. Relying on mutation entries, it is claimed that wife has undivided share in the agricultural property situated at Pimpalgao Sarai being Gat No. 88 total holding 1.14 Hecter. It is further claimed that respondent-wife is getting rental income as the hospital which was owned by her father is given on rent so also other properties which she has inherited from her parents is not disclosed. The further contention of Ms. Sarnaik is, it is the duty of respondent-wife to maintain the child out of her own income as she is highly qualified and she has refused to mention the name of the petitioner-husband as against the description of the name of the child. My attention is also invited to the fact that petitioner-husband has moved an application for D.N.A. test so as to set up and justify the plea of denial of paternity.

6] While countering the aforesaid submissions, learned counsel for respondent-wife would urge that she was doing temporary internship and was at no point of time secured any permanent employment. He would further claim that after marriage, she was not serving anywhere and that being so, wife is entitled for maintenance commensurate to standard of living of the husband in proportion to his earnings. It is further claimed that husband has no other liabilities and as such, income of the husband is required to be divided into three parts i.e. for himself, for wife and third part for her son. The claim of petitioner-

husband that respondent-wife is getting income from ancestral property, rental income is denied.

7] In the aforesaid background, I have proceeded to consider rival submissions of the parties.

8] The fact remains that husband is working as software engineer and in his income tax returns, his salary is shown to be around Rs. 80,000/-. There are no pleadings or evidence on record to infer that apart from liability to pay maintenance, there are other liabilities on the petitioner-husband. Though learned counsel for the petitioner has stated that wife has kept the child in a day care home and as such, adverse inference about her gainful employment ought to have been drawn. In absence of any material on record about her employment, particularly when she has denied that she is gainfully employed, the Court below was justified in refusing to draw such adverse inference.

9] Considering the income of the husband to be around Rs. 80,000/- per month and the fact that respondent-wife is required to stay at her parental home, both parents have expired, rightly prompted the Court of Senior Judge Senior Division, Pune to reach to a finding that there is neglect in maintaining the respondent-wife.

10] As regards the claim put forth by the husband regarding income of the wife from the ancestral property, there is no iota of evidence brought on record to justify the said claim but for 7/12 extract. Even otherwise, agricultural property referred supra depicts meager holding of 1 Hectar and odd. Revenue record further show 4 shares in the said ancestral property. No documents are placed on record about cropping pattern harvested from the said property, income if any received by applicant therefrom but for bald allegation. Similarly claim of rental income of wife is not supported by document. About hospital or ancestral property, no documentary evidence is produced on record by the petitioner substantiating the claim that hospital is given on rent or the respondent-wife is receiving any rental income from ancestral property. That being so, award of maintenance by the Court below was very much justified.

11] This takes me to the next submission viz. whether respondent-wife and son are entitled for enhanced maintenance.

12] This Court has noticed that net monthly income of the husband is around Rs. 80,000/-. Husband is not having any other liability than to pay maintenance to wife and son out of said net income of Rs. 80,000/-

about which findings are recorded by the Court below.

13] Considering the aforesaid fact, carving out 50% of the said amount at the disposal of husband, in my opinion, son and wife both are entitled for enhanced maintenance at the rate of Rs. 20,000/- per month to each of them. Such enhanced maintenance of Rs. 20,000/- per month to each of them i.e. wife and son respectively, in my opinion, is required to be paid from the date of filing of the Writ Petition No. 2394/2021.

14] As such, for the aforesaid reasons, Writ Petition No. 6605/2021 stands dismissed whereas Writ Petition No. 2394/2021 stands allowed. Petitioner-husband is directed to clear entire arrears including that of enhanced maintenance by depositing the said amount in the Civil Court within period of 6 weeks from today.

(NITIN W. SAMBRE, J.)

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SIDDHARAM
MASHAL

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