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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9437 OF 2019**

DIVYA PANDOO NAIG	..PETITIONER
VS.	
PANDOO PRABHAKAR NAIG & ANR.	..RESPONDENTS

Mr. Sanjay Bhojwani for the petitioner.
None for the respondents.

**CORAM : M.S.KARNIK, J.
DATE : MARCH 30, 2021**

P.C.:-

Heard learned counsel for the petitioner.

2. None appears for the respondent No.1 - husband though he is duly served.

3. The order impugned is passed in a review application filed by the petitioner - wife seeking review of the order dated 7/2/2018 below Exhibit 15 rejecting the claim of interim maintenance of the petitioner - wife. The main Petition is filed by the respondent no.1 - husband on the ground of adultery, cruelty and desertion. During the pendency of the Petition, an application for interim maintenance was made by the petitioner - wife. The trial Court rejected the application for maintenance so far as the petitioner is concerned by observing as under :-

“The respondent no.1 will not be entitled to claim any maintenance from the petitioner at this stage, but only after recording of the evidence, if the petitioner fails to prove about the entitled to get permanent alimony on merit from the date of filing of her application”

4. I have some difficulty in following what has been observed by learned Family Court. With the assistance of learned counsel for the petitioner, it appears that what learned Family Court meant is that the petitioner - wife will not be entitled to claim any maintenance from the respondent No.1 - husband at this stage, but only after recording of the evidence, if the respondent No.1 - husband fails to prove the charge of adultery on merit.

5. The review application filed below Exhibit 35 was rejected on 27/7/2018. The review application is rejected on the ground that the review application is not supported by oath. It has been observed that in the interim application, the applicant - wife has not mentioned any ground as provided under Order 47 Rule 1 of the Code of Civil Procedure and hence the application does not fulfill the requirements of review.

6. My attention is invited to page 129 of this paper-book which is an affidavit in support of the review application. The said affidavit has been duly affirmed by the petitioner - wife in support of the review application. It appears to have been overlooked by the Family Court.

7. In the review application, the applicant - wife relied upon the decision of this Court in the case of **Smt. Gangu Pundlik Waghmare vs. Pundlik Maroti Waghmare and another**¹. I have

¹ Air 1979 Bombay 264

gone through the decision relied upon by learned counsel for the petitioner.

8. The respondent No. 1- husband has failed to appear despite service of notice. In the interest of justice and considering the law laid down by this Court in the case of **Smt. Gangu Pundlik Waghmare** (supra), the application filed by the petitioner - wife for interim maintenance needs to be reconsidered. This Court was of the opinion that the allegations as to the merits of the rival contentions or which the claim for divorce is made should not be gone into at the time of deciding as to whether the applicant, under Section 24 of the Act, is entitled to payment of maintenance or expenses as it would amount to prejudging the whole issue. It has further held that a proceeding under Section 24 of the Act are intended to be summary in nature and it would not be appropriate at that stage to decide if the spouse making the application under that Section is or is not entitled to the said payment because of the misconduct or commission of marital offence by him or her. In the light of the decision of this Court, to my mind, the impugned order deserves to be set aside. The application for review below Exhibit 35 is allowed.

9. I make it clear that as regards the maintenance payable to the minor son - Tej in terms of the order dated 7/2/2018, the same remains undisturbed.

10. The application for interim maintenance below Exhibit 15 as regards the claim for interim maintenance by the petitioner – wife be decided afresh expeditiously on its own merits and in any case within a period of six weeks from today.

11. The Writ Petition is disposed of.

12. Parties to act on an authenticated copy of this order.

Diksha
Rane
Digitally
signed by
Diksha
Rane
Date:
2021.03.30
19:55:49
+0530

(M.S.KARNIK, J.)