

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7734 OF 2021**

Manish Narshi Bhawani .. Petitioner
Versus
Hetal Manish Bhawani .. Respondent

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Ms.Yogita Deshmukh Chitnis for the Petitioner.

Mr.Nitin V. Gangal with Ms.Namita Mestry, Mr.Ashok Kadam
and Ms.Pruna Shukla for the Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 06th DECEMBER, 2021**

P.C:-

1. The petitioner/husband is aggrieved by the common order passed by the learned Joint Civil Judge, Senior Division, Palghar on 21/09/2021 below two exhibits, being Exhs.5 & 30, in Marriage Petition No.97 of 2018.

The order, being passed on the two applications filed by the respondent/wife; the first being an application filed under Section 24 of the Hindu Marriage Act,1955, for interim maintenance and the second being, the application for enhancement of the amount claimed by way of the interim maintenance, is the subject of the writ petition.

2. The learned Judge has determined both these applications together and has passed the following order.

“1] Applications are allowed as follows.

2] The respondent husband is directed to pay Rs.50,000/- per month to petitioner wife towards her maintenance and Rs.50,000/- per month to her towards maintenance of his daughter from the date of application Exh.5 i.e. from 06/09/2018 till the month of February 2021.

3] Further, he is directed to pay Rs.65,000/- per month to petitioner wife towards her maintenance and Rs.65,000/- per month to her towards maintenance of his daughter from the date of application Exh.30 i.e. from 17/03/2021 until further order or disposal of the main petition whichever is earlier.

4] Further, he is directed to pay Rs.60,000/- to petitioner wife towards expenses of present proceeding and traveling.

5] The petitioner wife is entitled to accept the monthly maintenance on behalf of her daughter.”

3. With the assistance of the learned counsel appearing for the respective parties, I have perused the impugned order, which is passed on the affidavit, filed by the husband, in respect of assets, income and expenditure, filed on 17/06/2021.

On perusal of the impugned order, the learned Judge has deliberated on the claim of the wife accompanied with the affidavit of disclosure of her assets and liabilities and has determined the claim of the rival parties, in the backdrop of the allegations levelled against each other. Noting that the maintenance is also claimed for a daughter born on 15/04/1999, though major, since she is residing with the applicant/wife and she is looked after by her, by incurring the necessary expenses, her claim was also considered. Keeping in mind the parameters for determination of the quantum of the maintenance, the learned Judge has considered the material placed on record. In para 24, he has recorded that the income of the respondent/husband can only be revealed from his personal and HUF income tax returns, which are submitted only after filing of the petition, but he has failed to produce income tax returns of the earlier period. Further, income tax returns or statements of income and profits of M/s Oram Realty Pvt. Ltd. and M/s. Oram Buildcon Pvt Ltd. in which he claimed 76% stake, are also not produced on record is the observation of the learned court. A conclusion is drawn that the respondent/husband had not given true account of his assets, investment and income and has suppressed the income which he receives from the construction business. The petitioner/wife is recorded to have given particulars of assets and income of her own, which is supported by an affidavit.

The submission of Ms.Deshmukh, learned counsel for the petitioner, is that even the wife has a source of earning, but this fact was not within the knowledge of the petitioner and the application has been filed before this Court, outlining her

source of income. Concededly, after passing of the impugned order, the claim of the petitioner is that the amount awarded is excessive, whereas the claim of the respondent is, what she has claimed was much more than what the Court granted and the material to that effect is also placed on record by the wife, which justify the award of maintenance. The learned Judge has also recorded that the medical condition of the wife and the daughter immediately warrants a medical treatment and, therefore, he justified the amount awarded.

4. On consideration of the rival claims, it appears that both the parties are desirous of obtaining the decree of divorce. There were some talks at some point of time ensued in terms of the permanent monetary settlement, but on account of excessive demand, it could not reached to the logical end is the submission of the learned counsel for the petitioner whereas the submission of the learned counsel for the respondent is that considering the affluent lifestyle of the petitioner and looking to the necessity of the respondent and her major daughter, she has raised the demand, which would ensure a future for her daughter.

5. On perusal of the impugned order, it can be seen that the income of the petitioner from the two private limited companies in which he is a stakeholder, is not on record and the Court has not highlighted on the earnings of the petitioner thought the disclosure statement records that the said firms have annual turnover of Rs.Three Crore and the net worth of

the companies/firms/HUF is Rs.6.5 crores. The order, though refer to the material, does not reflect the application of mind of the learned Judge in actually arriving at the figure of Rs.50,000/- and Rs.65,000/- though by sketchily referring to some documents, at paragraph 23, the learned Judge records as under :-

“It seems that respondent receiving income by way of salaries and house rent which he let out to tenants and others.”

As against this, the income of the wife is not taken into account, though at the relevant point of time, no proof thereof was adduced, but now the submission is, the petitioner is armed with the material to reflect the earnings of the wife.

6. The amount of compensation to be determined must strike a balance between the earnings of the husband and the needs of the wife. A clean and clear balance-sheet must be drawn before the amount of maintenance is arrived at, which is apparently absent in the impugned order.

7. In the wake of the aforesaid, the respective counsel are at agreement that the matter can be remanded back for re-consideration of the amount of maintenance.

Learned counsel Mr.Gangal for the respondent/wife submits that the petitioner is in arrears of maintenance and the figure can be approximately estimated to Rs.Forty Five Lakhs.

8. Learned counsel for the petitioner is fair enough to state that he is not shirking from his responsibility and is ready to deposit part of the arrears, but since the very order under which maintenance is granted is challenged by him, it shall be without prejudice to his rights and contentions. The petitioner, on his own, has expressed that if the Court determines the amount to deposited, he shall deposit the same to establish his *bona fides*.

9. In the wake of the aforesaid statement, the balance can be struck between both the parties, by the petitioner being directed to deposit maintenance at the rate of Rs.50,000/- per month for the wife and daughter to be payable from 06/09/2018 till February, 2021 and for the months thereafter enhancing the amount to Rs.60,000/- per month, to be payable till 31/03/2022. In this way, the impugned order of maintenance is slashed by half of the amount directed to paid, during the pendency of the proceedings before the learned Judge on remand. From 01/04/2022 onwards, the parties will be governed by the new amount of maintenance that would be re-calculated by the learned Judge on remand of the proceedings, after affording opportunity to both the parties to stake their claim.

10. Learned counsel for the petitioner states that the petitioner shall act in terms of the aforesaid direction and the amount arrived at by slashing the amount of maintenance awarded by the impugned order by 50% is estimated as Rs.17,20,000/-, calculated upto March, 2022. The petitioner

undertake to make the payment of Rs.5,00,000/- immediately on or before 16/12/2021, which is a pre-condition for the learned Judge to proceed with hearing the applications, remanded to him for a fresh decision. Thereafter, he will deposit an amount of Rs.5,00,000/- in the following manner.

- a) First installment of Rs.5,00,000/- to be paid on or before 15/01/2022;
- b) Second installment of Rs.5,00,000/- to be paid on before 15/02/2022; and
- c) Third installment of Rs.2,20,000/- to be paid on or before 15/03/2022.

In the above manner, the petitioner shall clear the amount of maintenance of Rs.17,20,000/-. As far as the amount of litigation expenses to the tune of Rs.60,000/- which has been awarded under the impugned order is concerned, I am not inclined to show any indulgence on that count and the petitioner is held to be liable to clear the said amount. The amount as aforesaid and divided in distinct tranches shall be deposited in the account of the respondent/wife, who shall tender the details of her account forthwith to the counsel for the petitioner.

11. Upon remand of the matter, the learned Joint Civil Judge, Senior Division, Palghar is directed to conclude the re-hearing of Exhs.5 and 30 on or before 31/03/2022. It is made clear that the above order is passed by keeping all the contentions of the respective parties open and the learned

Judge shall re-hear the aforesaid exhibits, being uninfluenced by the present order.

The amount deposited as above shall be adjusted towards the final figure, which will be arrived at by the Court below, on hearing of the respective exhibits.

12. Since the parties are headed towards a divorce and they are clear on the said aspect of the matter, the only question that remains to be worked out amongst them is the monetary settlement. If the respective counsel are desirous of appointing any third party to mediate and work out the sum of permanent alimony and the necessary terms, subject to which the marriage can be dissolved mutually, they are at liberty to do so by suggesting a name of such a person before the learned Judge, who can permit the parties to negotiate on final terms of settlement.

13. With the aforesaid direction, the writ petition stands disposed of.

(SMT. BHARATI DANGRE, J.)