

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

WRIT PETITION NO.1715/2020

Mangeshkumar Sureshrao Mulankar .vs. Sau. Priti Mangesh Mulankar

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

Court's or Judge's orders.

Mr. S. D. Khati, Advocate for petitioner.

CORAM : V.M. DESHPANDE, J.
DATED : JANUARY 25, 2021

Heard Mr.Khati, learned counsel for petitioner.

2. Learned counsel for petitioner submits that learned Judge, Family Court, Amravati has committed a serious mistake at law inasmuch on 10.01.2020, the main proceeding filed on behalf of the petitioner i.e. for divorce was withdrawn by the petitioner and still on the very same day i.e. on 10.01.2020, the learned Judge of the Family Court allowed the application filed on behalf of respondent under Section 24 of the Hindu Marriage Act. He, therefore, submitted that application for grant of interim maintenance is not maintainable in view of the withdrawal of the main proceedings.

3. The undisputed facts of this writ petition are as under:

(i) There was a marriage between petitioner and respondent at Paratwada on 21.05.2013. The petitioner is husband and respondent is wife. They cohabited with each other till 14.12.2013. It is an admitted position on record

that the wife was required to file petition bearing No. A-07/2014 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and said petition was decreed on 30.04.2016.

(ii) In view of the decree for restitution of conjugal rights granted in favour of the wife, it does not lie in the mouth of the petitioner that the wife left the matrimonial house.

(iii) Further, it has come on record that in spite of decree, she was not allowed to cohabit. Therefore, she was required to file execution proceedings against the petitioner.

(iv) The petitioner, thereafter, filed a divorce petition under Section 13 of the Hindu Marriage Act and the said was registered as Petition No.A-229/2018 on the file of learned Judge, Family Court, Amravati. This petition for divorce was filed by the petitioner on 23.08.2018.

(v) The respondent, after appearing in the petition for divorce and on 16.10.2018 filed an application under Section 24 of the Hindu Marriage Act for interim maintenance. In the said, it was stated by wife that petitioner is working in Police Department and his monthly salary is Rs.40,000/-. The wife, therefore, prayed for interim maintenance at the rate of Rs.20,000/- per month and Rs.20,000/- for expenditure. The application filed on behalf of the wife in divorce proceedings is at Exh.-10. From the documents annexed along with this writ petition, it is clear that petitioner did not file reply to the application for interim maintenance. This application for interim maintenance was pending for its consideration on the file of learned Judge, Family Court, Amravati. Without there being

any order on the said application, the petitioner filed pursis (Exh.-25) thereby submitting that he wishes to withdraw the divorce proceeding. The learned Judge, Family Court passed an order on 10.01.2020 and accepted the pursis thereby permitting the petitioner to withdraw his divorce petition.

(vi) The learned Judge, Family Court, Amravati, on the very same day, also decided the application for interim maintenance, allowed the same and granted maintenance at the rate of Rs.15,000/- per month in favour of wife.

4. The submission of the learned counsel for petitioner that learned Judge has committed mistake in law inasmuch as when main proceeding was disposed of, the wife was not entitled to maintenance, is unacceptable. The petition for divorce was filed on 23.08.2018. The application under Section 24 for grant of interim maintenance was filed on 16.10.2018. The application for interim maintenance was to be taken up for consideration immediately. However, it appears that for one reason or the other the said application was not considered. Be that as it may, it is not at all in dispute that the respondent is petitioner's wife. There is nothing on record to show that the respondent is gainfully employed anywhere or she is having any independent source to survive herself. In the application for interim maintenance, it has been specifically stated by the respondent that she is living at the mercy of her father, who is a retired personnel. It is also not in dispute before this Court that petitioner is working in Police Department as a Constable.

5. Merely because the divorce proceedings are withdrawn that does not nullify the right of the wife to get interim maintenance during the pendency of the divorce petition. The divorce petition was filed on 23.08.2018 and it was disposed of as withdrawn on 10.01.2020. Therefore, from the date of application under Section 24 i.e. from 16.10.2018 till 10.01.2020, respondent was entitled to interim maintenance.

6. In view of that, there is no merit in the present writ petition. The writ petition is, therefore, dismissed. No order as to costs.

JUDGE

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