

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

CRIMINAL REVISION NO.45/2020

Ashish s/o Sudhakar Lokhande,
aged about 30 years, Occ. Nil,
r/o Tapovan Road, Yogiraj Nagar,
Amravati, Tq. Dist. Amravati.

.....APPLICANT

...VERSUS...

1. Shraddha w/o Ashish Lokhande,
aged about 28 years, Occ. Service.
2. Pradumna s/o Ashish Lokhande,
aged 7 months,
Being minor through legal guardian
mother i.e. non applicant no.1.
Both r/o c/o Shri Krushnarao
Bhishnurkar, near Sai Flour Mill,
and Ashirwad School, Zingabai Takli,
Godhani Road, Nagpur-30, Tq. Dist.
Nagpur (City), Dist. Nagpur.

...NON APPLICANTS

Mr. S. B. Gandhe, Advocate for applicant.
Mr. M. M. Kalar, Advocate for non applicants.

CORAM:- V. M. DESHPANDE, J.
DATED :- 03.03.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

Heard Mr. Gandhe learned counsel for applicant and
Mr. Kalar, learned counsel for non applicants.

2. This revision is directed against the order passed below Exh.6 in Petition No. E-662/2018 dated 03.01.2020 by learned Judge, Family Court No.4, Nagpur whereby learned Judge, Family Court, Nagpur has allowed application for interim maintenance pending main proceeding before the said Court.

3. Submission of learned counsel for applicant is that without ascribing any reason, learned Judge has granted interim maintenance from the date of application. He also submits that no evidence is produced on record to show that applicant is serving as Manager in the bank as stated in the application. He, therefore submits that the revision be allowed.

Per contra, learned counsel for non applicant supported the reasoning given by the learned Court.

4. It is not in dispute that applicant and non applicant no.1 are husband and wife and their marriage is still subsisting. Their marriage took place on 21.02.2017 and on 20.06.2018, non applicant no.2 was born. It is also not in dispute that non applicant no.2, whose age is shown as seven months, is staying with non applicant no.1.

5. Non applicants filed an application under Section 125 of the Code of Criminal Procedure before Family Court, Nagpur claiming maintenance from applicant. Said application is registered as Petition E-662/2018. In the said proceeding, non applicants filed an application (Exh.-6) and prayed that pending main proceedings, they be awarded maintenance. The main proceedings are contested by applicant by filing written statement (Exh.-16). The applicant also filed pursis Exh.-17 thereby adopted his written statement as reply to the application for interim maintenance. In the written statement, factum of marriage is not at all disputed. Similarly, paternity of non applicant no.2 is also not disputed by the applicant.

6. As per non applicants, the applicant is working as Manager in Navin Subhedar Sahakari Bank, Amravati and is drawing monthly salary of Rs.30,000/-. This aspect is specifically denied by the applicant in the written statement. In addition to that, it is his case that non applicant no.1 is working in one private company and is drawing Rs.10,000/- per month.

7. At this stage, it would be useful to refer order passed by learned Judicial Magistrate First Class, Nagpur in Misc. Criminal Application No.4203/2018. Order is dated 04.10.2019 and this order is passed in the application for grant of interim relief as envisaged under Section 23 of the Protection of Women From Domestic Violence Act, 2005. The non applicant has filed proceedings under the said Act and vide order dated 04.10.2019, the prayer made by the non applicants therein was allowed by learned Magistrate and the applicant herein was directed to pay maintenance of Rs.2,000/- per month to the applicants as interim maintenance from the date of the application i.e. 29.11.2018 till disposal of the proceedings.

8. The contention on behalf of learned counsel that no reasons are given by learned Judge, Family Court, while granting interim maintenance from the date of the application, in my view, is not sufficient to term the order as erroneous. Learned Judge will have to pass an order in that behalf at the time of final disposal of the main proceedings and not at the interim stage. The interim maintenance is granted pending main proceeding to save

wife and child from starving. The applicant cannot escape his liability to maintain his wife and child. Whether non applicant no.1 was required to leave her matrimonial house is the matter of evidence and that will be decided at the time of final disposal of the main proceedings. However, at this stage, filing of report on behalf of non applicant no.1 against the applicant with Police Station, Gadge Nagar, Amravati upon which crime is registered against the applicant for an offence punishable under Section 498-A, 323, 504 read with Section 34 of the Indian Penal Code has its own importance inasmuch as prima facie it shows that non applicant no.1 was subjected to cruelty at the hands of applicant and therefore she was required to stay along with her parents.

9. The contention on behalf of learned counsel for applicant that there is nothing on record to show that applicant is working as Manager with the bank, in my view, is also required to be rejected, for the reason that the evidence of the parties in main proceeding is yet to be started. The pleadings are made in the application by non applicants that the applicant is working as Manager with the bank. Of course, the said is denied in his written statement. Therefore, that will be a point to be determined

by the Court and parties will have to adduce evidence in that behalf. Presently, for deciding application for interim maintenance, pleadings play a vital role.

10. Learned Judge of the Family Court has also considered the interim maintenance granted in favour of non applicants in the domestic violence proceedings. In paragraph 12 of the impugned order, the learned Judge observed as under:

“12. The interim maintenance granted by this order shall include interim maintenance already granted to them in Misc. Cri. Appln. No.4203/2018...”

Therefore, it is clear that interest of the applicant is also protected by the Family Court.

11. During the course of hearing, it was informed to this Court that Petition E-662/2018 is fixed for evidence today itself. In that view of the matter, the Family Court shall decide the Petition F-662/2018, as early as possible and within a period of six months from today. Of course, parties before the said Court shall extend full cooperation to the learned Judge.

Record of this revision shows that as per order passed by this Court on 18.12.2020, applicant has deposited Rs.48,000/-

before this Court and said amount is lying in this Court. Surely, non applicants are entitled for the same.

12. The upshot of the aforesaid discussion, leads me to pass the following order.

ORDER

- (i) The revision application is dismissed.
- (ii) Order passed by learned Judge, Family Court No.4, Nagpur below Exh.-6 in Petition E-662/2018, is hereby confirmed.
- (iii) The learned Judge, Family Court No.4, Nagpur on whose file Petition No.E-662/2018 is pending, shall decide the same within six months from today, positively.
- (iv) The non applicants herein are entitled to withdraw Rs.48,000/- deposited by the applicant before this Court.

Rule is discharged.

JUDGE

kahale