

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

WRIT PETITION NO. 1961 OF 2021

Sanjay Ganpatrao Bagade

-Vs.-

Sarvary d/o Sanjay Bagade (thr.Her Natural Guardian Mother) & anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.I.Dipwani, counsel for the petitioner.

CORAM : MANISH PITALE, J.

DATE : 16.06.2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard the learned counsel for the petitioner.

3. By this writ petition, the petitioner has challenged order dated 18/02/2020 passed by the Court of Principal Judge, Family Court, Nagpur, whereby an interim application filed on behalf of the respondent for interim maintenance for minor daughter has been partly allowed.

4. The proceeding was initiated by the respondent No.2 under section 125 of the Criminal Procedure Code and she prayed for maintenance of Rs.10,000/- per month for the daughter. The petitioner contended that the respondent No.2 herself is employed and therefore, there is no substance in the application. It was further contended that the petitioner is not the biological father

of the minor girl and that therefore, he could not be forced to pay interim maintenance.

5. Insofar as the respondent being employed is concerned, it is the duty equally of both the parents to take care of the child, who in this case is a minor daughter. Secondly, on the aspect of the petitioner allegedly not being the biological father of the minor girl, the Court below has correctly referred to section 112 of the Indian Evidence Act in paragraph-5 of the impugned order to hold that at this stage, it cannot be said that the petitioner is not the father of the minor girl. The presumption under section 112 of the Indian Evidence Act clearly operates as the petitioner and the respondent did have a subsisting marriage at the time when the minor girl was born and at present nothing has been placed on record to show that the parties did not have access to each other at the relevant time.

6. The Court below has adopted a correct approach in the matter and in any case, the petitioner has been directed to pay only Rs.5,000/- per month to the minor daughter towards interim maintenance from the date of the application. Therefore, in these facts and circumstances, this Court declines to exercise writ jurisdiction in the matter. Accordingly, the writ petition is dismissed. No costs.

JUDGE