

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

WRIT PETITION NO.2644/2017

Shri Vasantao Bapuraoji Padole,
aged about 62 years, Occ. Retd.
r/o Near Bhawani Mandir and Ram
Mandir, Punapur Road, Bhawani
Nagar, Pardi, Nagpur.

.....PETITIONER

...V E R S U S...

Sau. Kalawati d/o Vasantao Padole,
(Ku. Kalawati d/o Raghoba Bhadre)
Aged about 57 years, Occ. Housewife,
r/o Plot No. 136, H.B. Builders Colony,
Namdeo Nagar, Kavra Peth, Shantinagar,
Nagpur.

...RESPONDENT

Mr. V. N. Patre, Advocate for petitioner.
Mr. K. R. Lule, Advocate holding for Mr. A. B. Bambal, Advocate
for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- 20.01.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties. Heard Mr. Patre, learned counsel for petitioner and Mr. Lule, learned counsel holding for Mr. Bambal, learned counsel for non applicant.

2. This writ petition is filed in the year 2017 to challenge the order of learned Judge Family Court-3, Nagpur dated

07.01.2017 assailing the order passed by learned Judge directing the petitioner to pay interim maintenance of Rs.5,000/- per month to the non applicant.

3. The learned counsel for the petitioner further submits that since the petitioner is a retired employee, if the Court is not accepting his other contentions, the impugned order be modified so that the petitioner will be paying maintenance from the date of the order i.e. 07.01.2017 instead of directing the petitioner to pay maintenance from 04.02.2015 i.e. from the date of application.

4. It is not in dispute before the Family Court or before this Court that the petitioner and respondent are husband and wife respectively. The petitioner (hereinafter referred to as 'husband') and respondent (hereinafter referred to as 'wife').

5. The wife filed petition under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 before the Family Court, Nagpur. The same was registered as Petition C-78/2013. In that, she moved an application for interim maintenance. In her application, it is claimed that the husband is a retired military personnel and also retired from the Reserve Bank of India.

6. The husband contested the application by filing reply (Exh.-39). It was contended in the reply and also by oral submissions before the trial Court as well as before this Court that on the earlier occasion, the application filed on behalf of wife under Section 125 of the Code of Criminal Procedure was dismissed. Thereafter, she again claimed maintenance. It is also submission that four sons are earning and the wife is residing with them and, therefore, the husband is not under obligation to maintain the wife.

7. The aforesaid submission made before this Court is devoid of any substance. Though, the earlier application filed on behalf of the wife under Section 125 of the Code of Criminal Procedure was dismissed, it was not dismissed on merit. It was dismissed in default. There was no adjudication in the said proceeding as to whether the wife is entitled for maintenance or not. In absence of adjudication from the competent Court, merely because the application was dismissed in default, that cannot operate as *res judicata* as tried to be canvassed by learned counsel for the petitioner. Hence, his contention is rejected.

8. Another contention is raised that wife is residing with four sons and they are earning and therefor he is not responsible for maintaining his wife. It is the primary obligation of the husband to maintain his wife. Merely because the sons are earning that does not absolve the husband from maintaining his wife except on the grounds and circumstances as mentioned in Section 18 of the Hindu Adoptions and Maintenance Act. None of the said circumstances are pleaded or prayed on record by the husband.

9. Another submission of learned counsel for petitioner is that wife is running a boutique and, therefore, is earning handsome income. Except this bald statement, there is nothing on record to show that the wife is running a boutique. Learned counsel for the petitioner further submitted that the wife earns Rs.5,000/- per month from one of the tenants. It was for the husband to prove the same. However, no evidence to that effect is brought on record. It could have been very easy to place on record affidavit of the said tenant. That has not been done.

10. It is not in dispute that the petitioner is a retired army personnel and also retired from Reserve Bank of India. It was the

duty of the petitioner to point out how much pension he is receiving, for the reasons best known to him, it is not on record. From this it is clear that the petitioner is withholding the best evidence and thus trying to suppress material facts from Court.

11. Insofar as alternate argument is concerned, it is the settled provision by way of various judicial pronouncement that maintenance has to be granted from the date of the application.

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

ORDER

(i) The writ petition is dismissed with costs of Rs.10,000/-.

(ii) The petitioner is directed to deposit amount of costs of Rs.10,000/- within three weeks from today with Family Court, Nagpur. Else, the Family Court, Nagpur to take steps to recover Rs.10,000/- from the petitioner.

Rule is discharged.

JUDGE

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**Yogesh
Kahale**

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signed by
Yogesh Kahale
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