

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4017 OF 2015

Nanda w/o Devidas Pawar,
Age:- 33 years, Occu: Nil,
R/o Ganori, Tq. Fulambri,
Dist. Aurangabad

... Petitioner

Versus

Devidas s/o Shyamrao Pawar,
Age: 41, Occu: Private Job and Pensioner,
R/o Kartik Nagar, Opposite Samarth
Complex, Mayur Park, Aurangabad.

... Respondent

...

Advocate for Petitioner : Mr. Pravin Suryawanshi

Advocate for Respondent : Mr. Kshitij Surve h/f Mr. Hemant Surve

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 12th SEPTEMBER, 2022

PRONOUNCED ON : 07th OCTOBER, 2022

ORDER :

1. This petition filed under Article 226 of the Constitution of India, is directed against order dated 17/01/2015, passed by Family Court, Aurangabad below Exhibit-17 in Petition No.A-305/2013, thereby rejecting application filed by petitioner wife for interim maintenance alongwith traveling expenses and litigation expenses under Section 24 of the Hindu Marriage Act, 1955 (for short 'the said Act').

2. Respondent husband filed Petition No.A-305/2013 seeking divorce from petitioner wife under Section 13 of the said

Act. In the said proceeding, wife filed application Exhibit-17 claiming interim maintenance of Rs.10,000/-, litigation expenses of Rs.5,000/- and traveling expenses.

3. The application was resisted by the husband by filing say contending that wife is not residing at Ganori, but she is staying at Aurangabad. She can avail free legal aid facility and therefore, no litigation expenses should be paid to her. He claimed that the wife has illicit relation with respondent No.2 in Petition No.A-305/2013 and he is maintaining her. He denied that he is earning Rs.10,000/- per month and getting pension of Rs.18,000/- per month.

4. Family Court rejected application filed by the wife holding that she is already getting Rs.2,000/- per month maintenance under the Protection of Women from Domestic Violence Act, 2005 and she is also granted rent of Rs.2,000/- per month. Thus, she is getting Rs.4,000/- per month from husband. Family Court, therefore, held that since husband is maintaining children, the wife is not entitled for any sort of additional money as interim maintenance. It is further held that since the wife is granted Rs.2,000/- per month as rent for staying at Aurangabad, she is not entitled for traveling expenses. It is also held that there is a facility of free legal aid and the wife can avail the said facility. Family Court, therefore, rejected the application.

5. I have duly considered rival submissions of learned advocate for petitioner and learned advocate for respondent. Perused the grounds raised in writ petition memo and documents placed on record.

6. Learned advocate for respondent husband has placed on record copy of final decision dated 17/11/2018 in Petition No.A-305/2013, by which the said petition is allowed and the marriage between husband and wife is dissolved. He, therefore, submits that nothing remains in the present petition to be decided, as the main proceeding itself is decided by the Family Court.

7. Indisputably, wife has no independent source of income. Family Court has held that husband is getting pension of Rs.18,000/- per month. It is also not in dispute that wife is getting Rs.2,000/- per month as maintenance and Rs.2,000/- per month towards rent. Taking into consideration the raising inflation, present day situation and status of the parties, amount of Rs.4,000/- per month cannot be said to be sufficient to deny interim maintenance to wife.

8. Approach of the Family Court in denying litigation expenses to wife on the ground that she can avail legal aid facility, is contrary to the letter and spirit of Section 24 of the said Act. It is a matter of record that the wife has contested matter by engaging a

lawyer.

Even if it is accepted that wife was staying at Aurangabad, she has to travel from her residence to Family Court and incur traveling expenses. This aspect is totally ignored by Family Court. For these reasons, the impugned order cannot be sustained and it is liable to be quashed and set aside.

9. In the result, writ petition is allowed in terms of prayer clause 'C'.

10. Respondent husband shall pay amount of Rs.1,000/- per month (in addition to Rs.4,000/- which is already being paid) to the petitioner wife from the date of filing of application under Section 24 i.e. 13/02/2014 till 17/11/2018 and shall pay amount of Rs.5,000/- towards litigation expenses and Rs.2,000/- towards traveling expenses.

(NITIN B. SURYAWANSHI, J.)