

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5752 OF 2019

Pravin Arjun Jadhav

...Petitioner

Versus

Pranita Pravin Jadhav

...Respondent

Mr. Kshitij Surve, Advocate for the petitioner.

Mr. Sanjay N. Pagare, Advocate for the respondent.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th SEPTEMBER, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the Family Court, Aurangabad, below Exhibit-119 in Petition No. C-26/2012, thereby rejecting the application filed by the petitioner.

2. Respondent/wife has filed Petition No. C-26/2012 for grant of maintenance for herself and minor son, under section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956, against petitioner husband

3. The husband filed application Exhibit-116 for calling the employer of the wife as witness. He further claimed that

while coming for deposition the employer should bring documents i.e. GST number, name of all employees, their designation, their age, addresses, duty list of all employees, their work timing, muster roll of all employees from 01.04.2017, salary details of all employees since 01.04.2017 and income tax details of the Institution of year 2016-2017. This application was partly allowed and witness summons was issued to the employer of the wife, directing to bring documents relating to income of the wife.

4. On receipt of summons, employer of the wife i.e. proprietor of Beauty World Institute Smt. Anjali Saidatta Samangaonkar, appeared along with muster roll, wherein name of wife stands at serial no. 1. She stated that the institute is calculating the presence of the employees and paying them wages as per their attendance. Further statement is that the institute is not maintaining record of salary of the workers, but is only maintaining muster roll. Therefore, she is unable to produce salary/remuneration record.

5. The petitioner, therefore, filed application Exhibit-119 contending that the witness has not brought documents relating

to the income of the wife. The documents sought in application Exhibit-116 are relevant as regards wife is concerned and they are deliberately attempted to be evaded by the witness. Therefore, witness may kindly be directed to come along with all the ordered documents. The witness filed say on the said application that she runs Beauty World Salon. Her employees are paid on every 10th day of month. They are given salary slips. Salary slips are given to the employees and she has not maintained record of the payment slips. The salary slips may be asked to the wife as same are given to her. The witness does not have any record. This application is rejected by the Family Court. Hence, the present petition.

6. The learned advocate for the petitioner by relying on say filed by the employer to the application of the petitioner submits that the employer has specifically admitted in her say that she makes payment on 10th of every month. Payment slip is given to the employees. Till date she has not kept record of the payment slips. He therefore, submits that, the employer is legally duty bound to maintain the record in respect of salary being paid to the employees and only with a view to help the respondent/wife, she is not bringing relevant documents in

respect of salary of the respondent. He therefore, submits that, the Family Court ought to have directed the employer to bring salary record of the respondent, as that is the only way by which the petitioner can prove his case that the wife is earning sufficient salary to maintain herself.

7. The learned advocate for the respondent supported the impugned order.

8. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ petition, grounds raised therein and the impugned order.

9. While rejecting the application filed by the petitioner in the impugned order the Family Court has held 'no doubt the witness has not brought the pay record of the petitioner. According to the witness, she is not maintaining pay record of the petitioner and therefore she is unable to produce. Once the witness is called for adducing evidence it is between party and witness how and what extent witness has to depose. Once the witness has come with the case that she is not maintaining the salary record of petitioner or there is no documentary evidence,

in such circumstances the respondent has to record her oral testimony. Today also the respondent is not interested in record evidence of the witness. The matter is time bound as per the High Court's order and the employer is present in the Court since last two dates. The petitioner is therefore, prolonging the matter.' Therefore, the Family Court has rejected the application Exhibit-119.

10. In view of peculiar facts of the present case, since the witness is specifically coming out with a case that she is not maintaining record of salary of her employees, in the opinion of this Court, she cannot be compelled to bring documents on record, which according to her are not in existence. The petitioner has ways and means to bring relevant documents on record, which the petitioner may avail. The petitioner can request the Family Court to draw adverse inference against the respondent/wife.

11. In this view of the matter and as the matter is directed to be decided within stipulated time, there appears substance in the observation of the Family Court that, the petitioner is trying to prolong the matter.

12. No merit is found in the challenge raised by the petitioner in the present petition, particularly, in view of say filed by the witness that she is not maintaining any record of salary being paid to the employees. The Family Court, therefore, is right in rejecting application Exhibit-119. The petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]