

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

WRIT PETITION NO. 254 OF 2021

Lakhan @ Laxman Dadasaheb Kale,
Age : 28 Years, Occu. : Education,
R/o At Post Shimpori, Tq. Karjat,
Dist. Ahmednagar. .. Petitioner

Versus

Ankita Laxman Kale,
Age : 25 Years, Occu. : Service,
R/o C/o Ganpat Sayaji Shinde,
At Post Dalaj No. 3, Tq. Indapur,
Dist. Pune. .. Respondent

Shri Mahesh K. Bhosale, Advocate for the Petitioner.
Mrs. Manjushri V. Narwade, Advocate h/f Shri Vinayak P.
Narwade, Advocate for the Respondent.

**CORAM : SANDEEP V. MARNE, J.
DATE : 30TH NOVEMBER, 2022.**

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. By this petition, the petitioner assails order dated 18.06.2020 passed by the Civil Judge Senior Division, Shrigonda awarding interim maintenance of Rs. 1,500/- per month to the respondent-wife under Section 24 of the Hindu Marriage Act in H. M. P. No. 125 of 2018.

3. The marriage between the petitioner and the respondent was solemnized on 18th December, 2016. The respondent-wife has filed petition for divorce. In that petition both wife and husband

filed their respective applications claiming interim maintenance against each others. Both raised a claim that they are unemployed, whereas their counterpart is employed and earning salary and income. The Trial Court after considering entire material on record has awarded interim maintenance of Rs. 1,500/- per month to the respondent-wife and has not awarded any interim maintenance to the husband.

4. Appearing for the petitioner Mr. Bhosale, the learned counsel would submit that the petitioner-husband proved before the Trial Court that the respondent-wife is employed. He relies upon salary certificate issued by Mphasis Limited, Pune for the month of February 2020 showing gross salary of Rs. 17,574/- and net salary of Rs. 16,372/-. He also places reliance on the statement issued by that company showing deposit of that amount in the bank account of the respondent-wife. Mr. Bhosale would further submit that contrary to the employment of the respondent-wife, she has filed false affidavit stating that she is unemployed and has made several other false statements in her affidavit of assets, income and expenditure.

5. Mr. Bhosale would further submit that the petitioner-husband is unemployed and that the respondent-wife did not produce any other material before the Trial Court to demonstrate that the petitioner-husband is earning any salary. He would submit that in the light of the evidence of income to the respondent-wife and complete lack of evidence of any income by the husband, the Trial Court ought to have rejected application of the respondent-wife for interim maintenance.

6. Mr. Bhosale would further submit that the respondent-wife has made false declaration of educational qualification as B. A. (Arts) and referring to the wedding invitation card, he would submit that the respondent-wife has stated therein that she is Software Engineer. Mr. Bhosale would rely upon following judgments of the Supreme Court and this Court.

- I. Bhushan Kumar Meen Vs. Mansi Meen @ Harpreet Kaur reported in (2010) 15 SCC 372.
- II. Amarjit Kaur Vs. Harbhajan Singh and another reported in (2003) 10 SCC 228.
- III. Mrs. Shlokha N. Chhabria Vs. Mr. Narendra A. Chhabria reported in 2019(7) All MR 100

7. Per contra, Ms. Narwade, the learned counsel appearing for the respondent-wife opposes the petition and supports the order passed by the Trial Court. She would submit that mere production of salary certificate in respect of one month is not conclusive proof of wife's employment. She submits that currently the respondent-wife is not employed anywhere. She would further submit that merely on the basis of qualification possessed by the respondent-wife interim maintenance cannot be denied to her. She would further submit that the petitioner-husband is not only employed in the Software company and earning monthly salary of Rs. 30,000/-. He is also doing dairy business from which he earns monthly income of Rs. 15,000/-. She would further submit that the petitioner has landed property capable of earning income. Mrs. Narwade further submits that even though order of interim maintenance is passed by the Trial Court on 18.06.2020, no amount, except amount of Rs. 15,000/-, has been paid by the

petitioner-husband of interim maintenance as directed by the Trial Court. In support of her contention Mrs. Narwade would rely upon judgment of the Supreme Court in a case of **Manish Jain Vs. Akanksha Jain** reported in **(2017) 15 SCC 801** and of this Court in a case of **Amol Chandrakant Mahamuni Vs. Swati Amol Mahamuni** reported in **2019(5) All MR 809**.

8. I have heard learned counsel for the parties and perused the record.

9. The Trial Court has awarded substantially small amount of interim maintenance of Rs. 1,500/- per month to the respondent-wife. This amount is required to be borne in mind while considering rival contentions of the parties about the income of the opposite party. True it is that the petitioner-husband has placed on record some evidence in the form of salary certificate indicating that the respondent-wife could possibly be employed atleast in February 2020. As against this the respondent-wife has not been able to produce any evidence to show that the petitioner-husband is employed. Both the petitioner and respondent claim themselves to be software engineers.

10. The issue that arises for consideration is if respondent-wife is working and earning, whether that itself can be a ground for denying interim maintenance altogether. In my view even if the respondent-wife is gainfully employed, it would always be responsibility of the husband to maintain the wife. Even if it is assumed that the respondent-wife is employed in a company of which salary certificate is produced, net salary shown therein is only Rs. 16,372/-. It cannot be stated by any stretch of

imagination that the respondent-wife is earning and getting handsome salary for herself. No doubt, the respondent-wife has not been able to produce any proof in support of her contention about the employment, business and agricultural income of the petitioner-husband. However, petitioner-husband also describes himself as a software engineer and as held by the Trial Court he is able bodied person. It is therefore clear that the petitioner-husband possesses necessary qualifications and ability to earn income for himself. In that view of the matter, interim maintenance of Rs. 1,500/- awarded by the Trial Court in favour of the respondent-wife does not appear to be unwarranted. The reliance of Mr. Bhosale on the judgment of the Apex Court in **Bhushan Kumar Meen** (supra) is of no avail. In that case after holding that the respondent-wife was able to maintain herself, the Apex Court has merely reduced the interim maintenance from Rs. 10,000/- to Rs. 5,000/-. The Supreme Court in that case has not denied interim maintenance to the wife on the ground that she is gainfully employed. So far as judgment of this Court in **Mrs. Shlokha N. Chhabria** (supra) is concerned, the same is relied upon in support of the contention that the Trial Court has committed an error in not considering salary certificate filed on record on the ground that same can be taken into consideration during trial. Mr. Bhosale is right in contending that the Trial Court ought to have taken into consideration the salary certificate for deciding the issue of interim maintenance. It is the reason why I have taken into consideration the salary certificate for the purpose of determination if any interference is warranted in the order passed by the Trial Court.

11. As observed earlier, merely because the respondent-wife is

able to maintain herself, same itself cannot be a ground to deny her any interim maintenance. The judgment in **Amol Chandrakant Mahamuni** (supra) cited by Mrs. Narwade in this regard is opposite. In para No. 13 of the judgment this Court has held as under :

13. At this stage, the learned counsel for the Petitioner interrupts the dictation to point out the fact that the Respondent is also working, is not considered by the trial Court. If the impugned order dated 31st August, 2015 is perused, this point has been considered by the learned trial Judge. In any case, even assuming that the Respondent is doing some work, in order to make ends meet and to barely survive, that by itself, cannot amount to any disqualification to receive any interim maintenance. In this case, as noted earlier, the interim maintenance of only Rs. 1,500/ p.m has been awarded to the Respondent. Accordingly, there is no merit even in this contention of the learned counsel for the Petitioner.

12. In **Manish Jain** (supra), the Apex Court has held in para No. 12 of the judgment as under :

"12. At the time of filing application under Section 24 of the HM Act in December, 2007, the respondent-wife was doing her internship in fashion designing in J. D. Institute of Fashion Technology and just completed the course and was not employed at that time. Only in the month of May, 2008, she became a trainee and joined FNL Magazine of Images Group as Junior Fashion Stylist and was earning an approximate/stipend income of L 21,315/- per month and due to recession, the same is said to have been reduced to L 16,315/- for three months that is July, August and September in the year 2009. It is stated that thereafter the respondent-wife has become jobless and associated with Cosmopolitan Magazine and according to the respondent-wife, she was working as a Stylist and is paid nominal amount of L 4,500/- per shoot and the said amount is inclusive of expenses like travelling etc. On a perusal of the judgment of the High Court and also the affidavit of the respondent-wife, it is clear that the respondent-wife has no permanent source of employment and no permanent source of income."

13. After considering the entire conspectus of the matter, I am of the considered view that the Trial Court has awarded extremely small amount of interim maintenance of Rs. 1,500/- considering the fact that the respondent-wife was not able to produce any documentary evidence in respect of any specific amount being earned by the petitioner-husband. The expectation of the petitioner-husband to cancel that small amount of interim maintenance of Rs. 1,500/- awarded by the Trial Court cannot be countenanced.

14. The conduct of the petitioner-husband in not complying the order dated 18.06.2020 is also required to be borne in mind. In the affidavit of income, assets and expenditure filed by the petitioner-husband, it is stated that only an amount of Rs. 15,000/- is so far paid by him to the respondent-wife. The order awarding interim maintenance has been passed on 18.06.2020 awarding interim maintenance of Rs. 1,500/- to the respondent-wife from the date of application dated 18.01.2019. Thus, the petitioner-husband is in huge arrears towards interim maintenance payable by him to the wife. It is really unfortunate that the petitioner-husband does not desire to pay even a small amount of Rs. 1,500/- per month to his wife. The conduct of the petitioner-husband is required to be deprecated and is deprecated. Needless to say that the respondent-wife is at liberty to take such steps against the petitioner-husband as are available under law for enforcement of the order dated 18.06.2020.

15. In the result I do not find any error being committed by the Trial Court in passing the impugned order. The petition is devoid

of any merits. The same is dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22