

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12288 OF 2019

Priyanka w/o Sudhakar Bochre

PETITIONER

Age – 28 years, Occ – Nil

R/o C/o Jagannath s/o Laxman Kolte

A-4/03, Mayur Park Colony,

HUDCO, Aurangabad

VERSUS

Sudhakar s/o Vitthalrao Bochre

RESPONDENT

Age – 32 years, Occ – Service

R/o N-12/D-25/6, Swami Vivekanand Nagar

HUDCO, Aurangabad

.....

Mr. A. M. Gholap, Advocate for the petitioner

Mr. K.B. Jadhav, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th AUGUST, 2022

ORDER :

1. The petitioner – wife is aggrieved by award of meager amount of pendente lite maintenance and rejection of her claim for travelling expenses and advocate's fees so also by the direction of the Family Court that her claim for litigation expenses will be decided with the main petition.
2. Respondent – husband filed HMP No. A-274 of 2018 under section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (hereinafter

for the sake of brevity "the said Act"), in the Family Court, Aurangabad seeking divorce from the wife. The wife resisted the claim of the husband by filing written statement.

3. By filing application Exhibit-8 under section 24 of the said Act, the wife claimed pendente lite maintenance @ Rs.20,000/- per month and Rs.30,000/-towards litigation cost, lawyer's fees and travelling expenses.

4. After hearing the parties, the Family Court awarded interim maintenance @ Rs.5000/- per month to the wife, from the date of the application, but rejected the claim of the wife for travelling expenses and lawyer's fees. The Family Court further held that the claim of the wife for litigation expenses will be decided with the main petition. Hence, this petition.

5. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the documents placed on record.

6. Before deciding the petition on merits, it is apposite to consider relevant provision i.e. section 24 of the said Act:

*"24. Maintenance pendente lite and expenses of proceedings –
Where in any proceeding under this Act it appears to the Court that
either the wife or the husband, as the case may be, has no*

independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

Plain reading of section 24 of the said Act makes it clear that the said provision is enacted with an object to provide interim maintenance as well as expenses of proceeding to the destitute spouse. It is a settled legal position that while deciding the quantum of maintenance, the status of the parties, standard of living, income of both the parties and capacity of the spouse to pay maintenance are required to be taken into consideration.

7. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made

by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent. (Vide "*Manish Jain V/s Akanksha Jain*" (2017) 15 SCC 801).

8. It is not in dispute that the wife has no independent source of income, sufficient for her support and for incurring necessary expenses of the proceedings. The husband is serving as a Head Constable in the Police Department. The Family Court, after considering the salary slips of the husband, has held that he is getting gross monthly salary of Rs.37,000/-. The Family Court has also noted that after the wife filed application under section 24 of the said Act, the husband has increased the installments of loan amount. However, the Family Court has awarded a meager amount of Rs.5000/- per month towards interim maintenance to the wife holding that the wife has failed to produce any documentary evidence in respect of her expenses and raising a doubt as to how the wife is spending Rs.20,000/- per month when she is not having any income.

9. The Family Court has misdirected itself in holding that the wife has failed to give any documentary evidence for her

expenses and it is doubtful as to how she is spending Rs.20,000/- per month in absence of any income. While awarding pendente lite maintenance of Rs.5000/- per month, the Family Court has ignored the wife's contention that the husband's parents are earning handsome income from rent, they have agricultural land having sweet lemon orchard and they are not dependent on the husband. In view of this position, the Family Court has committed an error in awarding meager interim maintenance @ Rs.5000/- per month.

Taking into consideration the income of the husband, status of the parties, standard of living of the spouses and in view of the the raising inflation and high cost of living, this Court is of the considered view that interim maintenance @ Rs.10,000/- per month would be reasonable in the present case.

10. The Family Court has further erred in denying travelling expenses to the wife on untenable ground that the husband and wife are residents of Aurangabad. When asked, the learned advocates for both the parties informed that the distance between the Family Court and the residence of the husband and wife is 8 km. Obviously, the wife has to travel 8 km on each date for attending the proceedings in the Family Court. The wife is not expected to walk down 8 kms on every date to the Family Court.

She needs to incur travelling expenses to reach the Family Court. This relevant aspect is erroneously ignored by the Family Court while refusing travelling expenses to the wife.

11. The Family Court has denied the claim of the wife towards lawyer's fees on the ground that there is no provision of granting amount of lawyer's fees and, therefore, the said claim is not maintainable. Without assigning any reason, the Family Court has ordered that claim of the wife for litigation expenses shall be considered along with the main petition.

The denial of claim of the wife of litigation expenses at interim stage, is contrary to the letter and the spirit of section 24 of the said Act. It is a common knowledge that litigation expenses would include lawyer's fees. Without engaging an advocate, the wife would not be in a position to effectively contest the proceedings filed by the husband. By not awarding the litigation expenses at the interim stage and denying travelling expenses and lawyer's fees, the Family Court has erroneously exercised its jurisdiction. While passing the impugned order, the Family Court has failed to take practical view of the matter.

12. The impugned order of the Family Court of not awarding

litigation expenses at interim stage and denying travelling expenses and lawyer's fees to the wife, is contrary to the object with which section 24 of the said Act is enacted. While passing the impugned order, the Family Court has failed to exercise the jurisdiction vested in it, which has occasioned failure of justice.

13. For the aforesaid reasons, the order passed by the Family Court is required to be modified. Hence, the following order:

ORDER

- a) Writ petition is allowed.
- b) The impugned order passed by the Principal Judge, Family Court, Aurangabad below Exhibit-8 is modified to the following effect:
 - I. The husband shall pay interim maintenance @ Rs.10,000/- per month to the wife from the date of the application.
 - II. The husband shall pay Rs.25,000/- to the wife towards expenses of proceeding.
- c) This order shall be complied with by the husband, within a period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE