

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

**CRIMINAL WRIT PETITION NO.1360 OF 2018
AND
CRIMINAL APPLICATION NO.1267 OF 2020**

1. Mrs.Seema w/o. Ankit Pantoji
2. Master Daksh s/o. Ankit Pantoji ..Petitioners

Vs.

Ankit s/o. Narayanrao Pantoji ..Respondent

Mr.I.D.Maniyar and Mr.V.V.Jahagirdar, Advocates for petitioners
Mr.D.A.Madke, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JANUARY 11, 2022
PRONOUNCED ON : FEBRUARY 14, 2022**

ORDER :-

The challenge in this Writ Petition is to the order dated 20.11.2017 in PWDVA No.120 of 2017 passed by learned Judicial Magistrate, First Class, Aurangabad and the order dated 07.07.2018 in PWDVA Appeal No.213 of 2017 passed by learned Addl. Sessions Judge, Aurangabad. Vide the orders impugned herein, the petitioners, wife and son of the respondent, were granted interim maintenance of Rs.2,000/- per month by the Court of Judicial Magistrate, First Class and has been enhanced to Rs.4,000/- per month by learned Addl.

Sessions Judge, Aurangabad, as interim maintenance. In short, the petitioners herein seek substantial hike in the amount of maintenance granted by learned Addl. Sessions Judge.

2. Learned counsel for the petitioners would submit that the respondent was serving as an Executive with Videocon Industries. His monthly pay was Rs.45,000/-. Only with a view to deprive the petitioners of their legitimate claim, the respondent left the job. He made a false claim to have been jobless. He even filed an affidavit to that effect. He has, however, been serving with M/s.Pantos Logistic Solutions India Pvt. Ltd. In spite of having been in service, he filed the false affidavit claiming to be jobless. The Family Court, in the petition filed by the respondent for dissolution of marriage by decree of divorce, granted interim maintenance of Rs.10,000/- per month and Rs.5,500/- towards rent of the premises to live in, respectively. Learned counsel would further submit that the petitioner-wife had no option but to work part-time for her living. The respondent is financially sound. He has share in the ancestral agricultural land. He owns a flat at Nashik. He would further submit that this Court had directed the respondent to deposit Rs.50,000/-. He has not complied with said order. The Court has also refused to

take on record the affidavit-in-reply filed by him in the present petition. Learned counsel, ultimately, urged for enhancement of maintenance amount.

3. Learned counsel for the respondent-husband, would, on the other hand, submit that the petitioner-wife has been serving and earns more than the requirement for her maintenance. The respondent, on the other hand, is jobless. The respondent has paid the amount of maintenance that was directed to be paid by the Family Court. He had, therefore, to raise loans from his friends and relations. According to learned counsel, since the respondent is unable to pay separate maintenance and the petitioner-wife is earning more than Rs.17,000/- per month, no interference is warranted with the impugned order.

4. Admittedly, petitioner - Seema is wife of respondent-Ankit. The couple is blessed with a son, Daksh, petitioner no.2. Admittedly, the respondent was serving with Videocon Industries as an Executive. They were residing in the premises provided to him by his employer, Videocon Industries. Same suggests that he was an Officer of the rank of Executive and must have been drawing salary not less than Rs.40,000/- per month. The record also indicates that

he quit the job with Videocon Industries and joined with M/s.Pantos Logistic Solutions India Pvt. Ltd. A statement of bank account of the respondent has been placed on record. A communication has also been placed on record to indicate the respondent to have resigned his job with M/s.Pantos Logistic Solutions as well. These facts, undoubtedly, indicate the respondent to have been an experienced Executive worked with the Corporate sector. Same suggests his ability to earn not less than Rs.40,000/- per month. He claimed to have been jobless inspite of having been in the employment. Admittedly, he has share in the ancestral agricultural land. There is also record to indicate him to have been holding a residential flat along with one lady. She is said to be his second wife.

5. Section 20(2) of the Protection of Women from Domestic Violence Act, 2005, states that the monetary relief granted under that Section shall be adequate, fair, reasonable and consistent with the standard of living to which aggrieved person is accustomed.

6. Since the respondent was working as an Executive with the Corporate sector and was residing in the premises provided by the company, the same suggests that their standard of living was good. It appears that the petitioner-wife had joined a job with

M/s.Vodafone Service Centre only with a view to earn her living. In the say filed by the respondent to the main application, he claimed to have been providing for maintenance of the son and taking all his care. The evidence in that regard is not forthcoming.

7. As stated above, the Family Court, in Hindu Marriage Petition filed by the respondent for dissolution of marriage, had directed him to pay a sum of Rs.15,500/-. Arrears thereof have been cleared by the respondent. It has, however, been informed that the marriage petition has been dismissed in default. As such, the order granting interim maintenance in the said proceedings, no longer subsists. The petitioners are, thus, entitled, at least, that much amount, i.e. Rs.15,500/- per month for their day-to-day maintenance. The amount of maintenance of Rs.2,000/- per month granted by learned Magistrate and enhanced by learned Addl. Sessions Judge to Rs.4,000/- per month, appears to be pittance and grossly inadequate. Same needs to be enhanced to Rs.15,500/- per month with a rider that due set off shall be given to the amount and the period for which the respondent has paid that much amount in terms of the order passed by the Family Court.

8. The Writ Petition is allowed in terms of the following order:-

- (i) Interim maintenance granted by the appellate Court is enhanced from Rs.4,000/- per month to Rs.15,500/- per month to be paid from the date of application.
- (ii) Due set off shall be given to the amount and the period for which the respondent has paid that much amount in terms of the order passed by the Family Court.
- (iii) The trial Court shall decide the proceedings as expeditiously as possible and preferably, within a period of one year from the date of receipt of a copy of this order, uninfluenced by the observations made herein and the quantum of maintenance granted hereby.
- (iv) In view of disposal of the Writ Petition, Civil Application No.1267 of 2020 stands disposed of.

[R.G. AVACHAT, J.]

KBP