

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7517 OF 2019

Mrs. Manisha Yash Dave

..Petitioner

V/s.

Mr. Yash Balkrishna Dave

..Respondent

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CHAVAN

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Ms. Seema Sarnaik a/w Ameya Tamhane for the Petitioner.

Ms. Ghazala Zubair Khan for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 11 AUGUST 2022

P.C.

. Rule. Rule made returnable forthwith. The learned counsel for the Respondent waives service. Heard finally by consent of parties.

2. The Petitioner-wife has filed matrimonial petition No. 1780 of 2014 against the Respondent-husband under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The Respondent husband has filed petition No. A-1386 of 2013 against the Petitioner for dissolution of marriage on the ground of cruelty. Both these petitions are pending before the Family Court at Bandra, Mumbai.

3. It appears that the Petitioner filed interim application No. 157 of 2013 (Exh.10) in Petition No. A-1386/2013 claiming interim maintenance under Section 24 of the said Act. That application was filed on 21.08.2013. The Petitioner also filed a similar application for interim maintenance in Matrimonial Petition No. 1780/2014 which was filed on 14.07.2014.

4. It appears that the Family Court initially had granted 'ad-hoc maintenance' @ Rs.30,000/- per month for the Petitioner-wife and two children for three months. It appears that on 30.06.2015, the learned counsel for both the parties consented for continuing the said maintenance for the period commencing from the date of filing of the application till passing of the order.

5. In view of the said concession, the learned Family Court by virtue of an order dated 30.06.2015 (below Exh. 10) i.e. interim application No. 157 of 2013 in petition No. A-1386-13 has passed following operative order.

ORDER

1. The Petitioner-husband shall pay maintenance pendente lite @ of Rs.30,000/- per month for his wife and two children, from the date of filing of the application i.e. from July 2014, till June 2015.

2. The Petitioner shall further pay maintenance pendente lite @ of Rs.50,000/- per month i.e. Rs.20,000/- per month to the

respondent and Rs.15,000/- per month each to both the child, from the month of July, 2015 till decision of the petition.

3. In addition to the above maintenance amount, the petitioner shall incur the entire expenses relating to children's education including school fees, tuition fees, bus fees etc. He shall also incur the expenses relating to the children's medical treatment and vacation tours. He shall also bear the expenses of the society maintenance of the flat wherein, the respondent and children are residing and in addition to that he shall also continue all the medical and insurance policies taken in the name of the respondent and children.

4. The petitioner shall also reimburse the medical expenses of the respondent subject to production of medical bills by her on record.

5. Whatever amount paid by the petitioner to the respondent uptill now shall be adjusted.

6. The petitioner is at liberty to withdraw the amount of maintenance deposited by him in a joint account and to pay the same to the respondent towards full and final adjustment of the above quantum.

7. No order as to costs.

6. The Petitioner claims that the application was filed on 21.08.2013 and therefore, there was an inadvertently error which crept in the operative order, where the date of filing of the application is mentioned as July 2014 which ought to be 21.08.2013.

7. The Petitioner, therefore, filed an application Exh.15 for review seeking modification of the order for grant of maintenance

from the date of application i.e. 21.08.2013 instead of July 2014 which application came to be rejected by order dated 28.11.2018. The Petitioner is challenging the said order dated 28.11.2018 in this petition.

8. I have heard the learned counsel for the parties. Perused record.

9. The learned counsel for the Petitioner submitted that there was an evident error in the order dated 30.06.2015 where the maintenance was granted from July 2014 and not from 21.08.2013. It is pointed out that the order dated 30.06.2015 is shown to be passed in IA No. 157 of 2013 (Exh. 10) which is filed on 21.08.2013. She therefore, submitted that the Family Court was also in error in refusing to review the said order and to correct the error.

10. The learned counsel for the Respondent submitted that there were two separate applications, or claiming interim maintenance filed by the Petitioner wife and the application for interim maintenance in her own petition was filed on 14.07.2014 and all along it was the impression of the parties while giving consent as recorded in order dated 13.06.2015, for grant of interim maintenance from the date of application which was filed on 14.07.2014. She therefore submitted that there is no error in

the order dated 13.06.2015 and therefore, the application for review is rightly rejected.

11. I have considered the submissions made. It is apparent that the Petitioner has filed two applications for interim maintenance, first of which is filed on 12.08.2013 in Petition No. A-1386/2013 which is at Exh.10. The second application is filed in her own petition on 14.07.2014. It is significant to note that the order dated 30.06.2015 is passed below Exh.10 i.e. in IA No. 157 of 2013 in Petition No. A-1386/2013 and upon concession to grant the maintenance from the date of filing of the application. It is evident that it should be from the date of filing of the application which is on 21.08.2013. The contention on behalf of the Respondent cannot be accepted as the submissions recorded in paragraph 3 of the order, do not reflect that the concession was in relation to the application filed on 14.07.2014, in MJ Petition No. 1780 of 2014.

12. In that view of the matter, the petition has to succeed. The petition is accordingly allowed. The impugned order is hereby modified by directing the payment of maintenance from the date of application i.e. 21.08.2013.

The rest of the order shall stand as it is. The arrears which are arising out of the said modification shall be paid within a period of three months from today.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.