

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4511 OF 2022

Shailesh Kanti Vishe] ... Petitioner

Vs

Mayuri Shailesh Vishe] ... Respondent

...

Mr. Kayval P. Shah for the petitioner.

Mr. Ajit R. Pitale for the respondent.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 23RD JUNE, 2022.

P.C.:-

1. By the present writ petition, the petitioner has assailed order dated 22/11/2021 passed by the Family Court, Thane in Marriage Petition No.A-111 of 2018.

2. The order came to be passed on an application filed by the wife under Section 24 of the Hindu Marriage Act, seeking maintenance for herself and her minor son. The application came to be partly allowed and the husband was directed to pay a sum of Rs.7,000/- per month to the applicant-wife and Rs.3,000/-

per month to the minor son, towards interim maintenance from the date of filing of the application.

3. The grievance raised in the petition is that the child is staying with the petitioner-husband and, therefore, the Family Court was not justified in awarding the maintenance of Rs.3,000/- for the child. Learned counsel for the respondent-wife do not dispute that the child is staying with the father and, therefore, the maintenance ought not to have been awarded for the child.

4. The consensus is to the effect that the maintenance of the child, as ordered by the Family Court, Thane, shall be struck off.

5. Learned counsel for the petitioner also raised an objection about the quantum of maintenance directed to be paid to the wife i.e. a sum of Rs.7,000/- per month. Learned counsel would submit that she has failed to establish that she has no source of income.

6. This argument is not acceptable, particularly when the application has been filed by the wife under Section 24 of the Hindu Marriage Act i.e. claiming maintenance *pendente lite*, mere assertion in the application on affidavit that she is unable to maintain herself and seeking interim maintenance from the husband, is sufficient. It is the duty of the husband to dispute

the said statement by showing her independent source of income, which the husband has failed to show.

7. Noting the above aspect, the Family Court has directed the husband to pay maintenance of Rs.7,000/- per month to the wife, taking into consideration the assets and liability statement of the petitioner.

8. The learned Judge was perfectly right in doing some guesswork while granting maintenance. There is no merit in the petition. The petition is dismissed.

[SMT. BHARATI DANGRE, J.]