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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7094 OF 2022

DIPALI SHIVPRASAD TARLE
@ DIPALI TANJIRAO CHAVAN ..PETITIONER
VS.
SHIVPRASAD BALASAHEB TARLE ..RESPONDENT

Adv. Harpreet Singh a/w. Adv. Tejas P. Hartalkar i/b. Adv.
Shaha Anuj Abhaykumar for the petitioner.
Adv. Rameshwar Gite for the respondent.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 18, 2022.

P.C. :

- 1.** Heard learned counsel for the petitioner-wife and learned counsel for the respondent-husband.
- 2.** The challenge in this writ petition is to an order dated February 5, 2022 passed by the trial Court rejecting the application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 (hereafter 'the said Act' for short).
- 3.** It is an admitted position that the respondent-husband is a Neurosurgeon. It is further admitted that the petitioner-wife is earning an income of Rs.1,35,000/- per month and the income tax returns are filed by her. Before the trial Court it was the submission of the petitioner-wife that the

income of the respondent-husband is almost double than that of her income. It was submitted that it is the responsibility of the respondent-husband to provide for maintenance of the petitioner-wife as well as their daughter-Shrutika.

4. The trial Court observed that the respondent-husband is also a doctor working as a Neurosurgeon. According to the trial Court, though respondent-husband denied his responsibility towards the petitioner-wife and daughter by submitting that he has no income source and ignored to file affidavit of assets and liabilities, which in the opinion of the learned Judge was sufficient to draw adverse inference, however, the trial Court further observed that though it is the preliminary responsibility of the respondent-husband to maintain his wife and daughter, there should be some documents to show tentative figures of earnings of the respondent-husband on record. The trial Court then went on to hold that as the petitioner-wife is earning Rs.1,35,000/- per month, which earnings are sufficient to prove that she is not in need of any interim maintenance of herself and her daughter.

5. In my opinion, the approach of the trial Court is not in consonance with the spirit of the provisions regarding grant of maintenance under the said Act. It was the specific case of the petitioner-wife that she was spending nearly about Rs.30,000/- per month towards school fees and day care facilities of their child. It is further pleaded that her total

monthly expenditure is about Rs.1,41,811/- which is more than her salary. I find that the wife and daughter are living in Kharghar, Navi Mumbai. These are the circumstances not at all taken into consideration by the trial Court. Only on the ground that the petitioner-wife is earning Rs.1,35,000/- per month, the trial Court has held that it is sufficient for the petitioner-wife to maintain herself and her daughter. Further, the entire responsibility of indicating what are the earnings of the respondent-husband is placed on the shoulders of the petitioner-wife despite the fact that admittedly the respondent-husband is a Neurosurgeon. It is the contention of learned counsel for the petitioner-wife in this writ petition that apart from the salary that the respondent-husband is earning as a Neurosurgeon, he is having his own clinic from which he is earning income. An opportunity needs to be given to the petitioner-wife to bring these facts on record by way of an additional affidavit before the trial Court. All these facts will have to be taken into consideration by the trial Court.

6. I am informed that in proceedings filed under the Domestic Violence Act, the respondent-husband voluntarily submitted that he would provide for the maintenance of Rs.10,000/- per month to the child. The respondent-husband has filed the income tax returns in such proceedings. In my opinion, having regard to all these materials, the application for interim maintenance needs to be reconsidered afresh by the trial Court.

- 7.** The impugned order is set aside.
- 8.** The trial Court to rehear the application below Exhibit 5 afresh on its own merits and in accordance with law within a period of three (3) months from tomorrow (November 19, 2022) which is the next date before the trial Court.
- 9.** The trial Court to decide the application (Exhibit 5) without being influenced by the observations made by me in this order.
- 10.** The writ petition is partly allowed.
- 11.** No costs.

(M.S.KARNIK, J.)