

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9088 OF 2022

Mrs.Pratibha Prashant Dhole

...Petitioner

Vs.

Mr.Prashant Hanumant Dhole

... Respondent

SNEHA
NITIN
CHAVAN

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SNEHA NITIN
CHAVAN
Date: 2022.07.30
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Ms. Savita Yadav for the Petitioner.

Ms. Suvarna Telgote for the Respondent.

CORAM : C.V. BHADANG, J.
DATE : 29 JULY 2022

P.C.

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

2. By this petition, the Petitioner/wife (original Respondent) is challenging the quantum of maintenance granted vide order dated 05.08.2021 passed by the learned Family Court at Bandra in Interim Application No. 3 of 2019 in Petition No. A-1257 of 2015.

3. The aforesaid petition is filed by the Respondent-husband against the Petitioner for dissolution of marriage. In the said petition, the Petitioner filed an application (Exh.61) under

Section 24 of the Hindu Marriage Act, 1955 claiming interim maintenance of Rs.10,000/- (Rs.5000/- for herself and Rs.5000/- for the minor daughter). Incidentally, the daughter is presently aged about 9 years and is studying in 3rd standard. The Respondent is working as a police constable and as per the salary slip of February 2020, he was drawing a gross salary of Rs.50,629/-. The salary slip shows that total government recoveries are to the extent of Rs.9014/- and non government recoveries are to the tune of Rs.9990/- which is last mentioned amount is towards EMI of the housing loan obtained by the Respondent.

4. The learned Family Court after noticing that the Respondent was paying an amount of Rs.3,000/- per month to the wife and was also bearing the educational expenses of child has granted maintenance of Rs.3,000/- per month only to the Petitioner-wife from the date of filing of the application i.e. 4.01.2020. It is not in dispute that the Respondent is complying with the said order.

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

6. The learned counsel for the Petitioner submitted that the amount of Rs.3000/- per month as awarded by the Family Court

is inadequate and insufficient for the Petitioner for her livelihood. It is submitted that looking to the salary drawn by the Respondent and the fact that the Petitioner is entitled to lead a life of similar standard as that of the Respondent, the amount may be enhanced to Rs.20,000/- per month for herself as well as the child.

7. The learned counsel for the Respondent has strenuously urged that the Petitioner is drawing carry home salary of Rs.31,625/- in February 2020. It is submitted that an old aged mother of the Respondent, is dependent on him and the Respondent is also bearing educational expenses of the child. It is also submitted that the Respondent is paying EMI of Rs. 9869/- to the Co-operative Credit Society towards the financial assistance obtained by the Respondent. She, therefore, submits that the Respondent is not in a position to bear any additional expenses towards maintenance.

8. It is submitted that the Petitioner had claimed total maintenance of Rs.10,000/- per month before the Family Court and now in the present petition, she cannot claim any enhanced maintenance @ Rs.20,000/- per month.

9. I have considered the submissions made.

10. It is now well settled that maintenance includes essential expenses towards food, clothing, residence, medical expenses and other requirements of day-to-day life. The contention that enhanced maintenance could not have been claimed cannot be accepted obviously because living expenses are subject to the dearness and rise in cost of living. Merely because the Petitioner had claimed maintenance of Rs.10,000/- for herself and for child, is no reason for not considering any claim for enhanced maintenance. Looking to the nature of the claim, it is not necessary to go into the technicality, or to insist that the Petitioner should have lodged such claim before the Family Court in the first instance.

11. As it is common knowledge that there is considerable rise of living expenses since the year 2020, the quantum of the maintenance has to be fixed after taking into consideration the relevant circumstances such as requirement of the Petitioner and the minor child as well as the income of the Respondent and also the expenses incurred on any dependent family member. It is necessary to note that the child who is presently studying in 3rd standard would also require expenses towards her education.

12. In the present case a salary slip of Respondent of February 2020 shows that gross emoluments at Rs.50,629/- and net carry home salary after all deductions is Rs.31,625/- per month.

13. It is also necessary to take note of subsequent rise of salary on account of increase in dearness allowance from February 2020.

14. Considering the over all circumstances, in my considered view, it would be appropriate to grant maintenance to the Petitioner-wife at the rate of Rs.8,000/- per month and for the child @ Rs.4000/- per month. This order shall be effective from the date of the present petition i.e. 24.06.2022.

15. This shall be addition to the educational expenses which the Respondent is currently bearing of their child.

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

C.V. BHADANG, J.