

Sandeep s/o Gopal Kedia .. Petitioner  
Versus  
The State of Maharashtra & Anr .. Respondents

Mr.Anand Mishra i/b Mr.A.M. Saraogi for the petitioner.  
Ms.Twinkle Bhalghat i/b Solicis Lex for the respondent.  
Mr..P.P. Pujari, AGP for the State.

CORAM: BHARATI DANGRE, J.  
DATED : 8<sup>th</sup> JULY, 2022

P.C:-

1           Petition is filed by the husband, challenging the order dated 10/3/2021 passed by the Family Court, Mumbai on an application filed by the respondent wife under Section 24 of the Hindu Marriage Act.

2                      Petition No.1764/2016 is instituted by the husband, seeking dissolution of marriage. In the said petition, the wife took out an application for maintenance, claiming that she has no source of income and there is a daughter aged, 14 months. As per the applicant, the husband had left the house without making any provision of her as well as her daughter. She pleaded that the husband is a singer and earn more than Rs.One lakh per month.

As against this, she projected that her requirement is of Rs.50,000/-.

3           Worth to note that the parents of the respondent husband had instituted proceedings before this Court by way of an Appeal, claiming the relief of evicting the son and daughter-in-law from the premises which were owned by them. The matter was attempted to be resolved and taken up in chamber on 23/4/2018 for mediation. The daughter-in-law, however, expressed that she is not ready to settle the matter, but the respondent no.1 therein, i.e. the husband make a categorical statement that he shall deposit Rs.35,000/- towards rent of temporary accommodation of respondent no.2. In addition, he also deposited sum of Rs. One lakh towards advance/deposit for rental premises and the leave and licence agreement shall be executed in name of respondent no.2.

Thereupon, the respondent no.2 made a statement that she shall vacate the premises within a period of one month.

It is not disputed that she vacated the premises, but the learned counsel for the respondent wife would submit that she is residing in the rented premises and the rent is arranged by the petitioner, and he is paying a sum of Rs.35,000/- as undertaken by him.

4           While deciding the application u/s.24 i.e. maintenance pendente lite, the learned Judge, Family Court has

expressed that the controversy can be curtailed by taking note of the fact that the husband had shown his willingness to pay reasonable amount for the child. Recording that he is still paying Rs.35,000/- as per his capacity, his statement to pay Rs.35,000/- was accepted as a consent for payment of maintenance, per month for the wife and child, and on such an offer, husband has been directed to pay Rs.35,000/- per months towards interim maintenance.

The amount has been directed to be paid from the date of the application.

5 When the order is carefully read, it appear that the Family Court was harbouring under a wrong impression, that the husband has accorded his consent for payment of Rs.35,000/- towards maintenance, as it can be seen that in the proceedings before this Court, in AO St. 1295/2018, on 23/4/2018, the consent of the respondent no.1 husband was recorded for the purpose of arranging the rent of the temporary accommodation and it was quantified at Rs.35,000/-. There is no offer given by the husband to pay maintenance of Rs.35,000/- for the wife and child per month.

In absence of such a consent, when this statement is particularly made by the counsel for the respondent that he had never offered payment of any maintenance and what he has agreed, was to make over sum of Rs.35,000/- for the rent of the

accommodation, on the respondent no.2 undertaking to vacate from her matrimonial house, the learned Judge has therefore, simply misconstrued the said statement and accepted it as an offer and has not determined the entitlement of the applicant wife u/s.24.

6           When an application for interim maintenance is to be determined, the earnings of the husband and his capacity to pay as *juxtaposed* against the needs of the wife will have to be determined. Unfortunately, no such exercise has been carried out.

7           The learned counsel for the petitioner state that he has filed the Review Petition before the Family Court on 29/4/2021 and has invited the attention of the Court to the error which has crept in, on account of his statement being misconstrued. It is informed that the Review Petition is pending.

8           Hence, by keeping the impugned order dated 10/3/2021 in abeyance, the Family Court is requested to take up review petition for hearing at the earliest and shall dispose of the same on or before 30/9/2022.

The Family Court is at liberty to re-determine the amount of maintenance, if at all it come to a conclusion that there is an error in recording the statement of the husband that he is ready to take up the liability of Rs.35,000/- towards maintenance. The Family Court shall also take into account the rival claim of the parties, since contention of the husband is to the effect that

the wife is not residing in the rented premises, whereas the wife specifically plead that she is residing in rented house and she has also produced on record a leave and licence agreement to that effect.

With the aforesaid direction being issued to the Family Court, Writ Petition is disposed off.

9 Liberty is reserved in the petitioner to assail the order passed in Review Petition if situation arises.

10 Learned counsel for the petitioner state that the wife has filed execution proceedings for executing the impugned order vide Regular Darkhast No. A-1764-2016.

In the wake of the above direction, to decide the Review Petition, the execution proceedings initiated against the petitioner, are stayed.

( SMT. BHARATI DANGRE, J.)