

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH PANDIT
Date: 2022.11.28
11:19:18 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3418 OF 2022**

Machindra Balasaheb Toke Petitioner.

V/s

Smt. Sneha Machindra Toke Respondent.

**WITH
INTERIM APPLICATION NO.18616 OF 2022
IN
WRIT PETITION NO.3418 OF 2022**

Sneha Machindra Toke Applicant.

In the matter between

Machindra Balasaheb Toke Petitioner.

V/s

Smt. Sneha Machindra Toke Respondent.

Mr. Ashok T. Gade a/w Riya John i/b Sagar R. Jadhav for the original
Petitioner.

Ms. Seema Sharma for the Applicant in IA/original Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 23, 2022

PC.:-

1] Petitioner/husband initiated divorce proceedings under Section 13(1)(i-a) of the Hindu Marriage Act which is registered as PA No.261 of 2019. In the said proceedings, non-applicant has taken out an

application under Section 24 on the ground of interim maintenance for herself and her two children. Said application came to be allowed vide order impugned dated 20/11/2021 passed by the Family Court, Pune. As such, this Petition.

2] Parties claim that they were married on 01/01/2011 and are blessed with a daughter Shravani and a son Shreyas. Admittedly, Respondent-wife is the custodian of the said children. Out of matrimonial discord, aforesaid proceedings are taken out in which the Family Court has awarded maintenance vide impugned order @ Rs 5000/- to the Respondent-wife and Rs 2500/- each to the daughter and son i.e. total Rs 10,000/-. The order is questioned on the ground that there is enough material on record to infer independent income of the Respondent-wife. It is also claimed that Respondent-wife has suppressed her income from the court below when the order impugned came to be passed.

3] So as to substantiate the said claim, my attention is invited to the details furnished on affidavit by the Respondent-wife such as bank

statement, income from other sources etc. Counsel would urge that Respondent has tendered an affidavit in this Court, thereby admitting the fact that she was investing in mutual funds and share market from 2017 to 2019 from the amount which she has received from her father Pandurang Mane. It is claimed that said investment was qua the intention of the parents of the Respondent to secure future of the children of the Respondent. My attention is also invited to the fact that said amount allegedly claimed to have been returned by the non-applicant to her parents for which there is no material/evidence on record. It is also claimed that there are entries to the effect that such amount was taken from the Account of the non-applicant towards investment. In affidavit, it is specifically claimed to have been stated by the non-applicant that she is collecting rent. As such, it is claimed that aforesaid material facts and evidence is suppressed by the Respondent-wife from the court. As such, order impugned came to be passed, thereby awarding maintenance.

4] Counsel for the Petitioner would urge that he has no objection for paying maintenance to the kids and rather in response to court's

query has urged that he would pay little more maintenance to the kids if order of payment of maintenance to the mother is upset by this Court.

5] Counsel for Respondent-wife while supporting order impugned, would urge that non-applicant is self employed. According to her, she has parents who are in advance age and are also having some medical ailments. According to her, whatever investments are made, they are in the name of children by her parents and not from her own income which she has earned. So as to substantiate the said claim, reliance is sought to be placed on the pleadings in the affidavit which is submitted in this Court. As such, it is claimed that Respondent has no independent source of income and as such, she has very much satisfied the very requirement under Section 24 of the Act, so as to have maintenance.

6] I have appreciated said submissions.

7] Having perused the affidavit which was tendered before the

Family Court which has led to passing of the impugned order under Section 24 of the Act, what can be noticed is, Respondent has not disclosed income from other sources, like the one which is now mentioned in the affidavit before this Court. Not only this, it has been specifically mentioned that Respondent is collecting rent receivable from properties which are owned by her parents. She has specifically stated that she has started residing with with her parents. In addition, it is specifically mentioned that every month amount is invested in the name of her children which she claimed to have received from her parents.

8] As regards receipt of amount from parents towards investment is concerned, there is specific admission that that she has received such amount for investing in the name of children on certain occasion and time. She has specifically stated that she has returned the the amount to her parents. However, there is hardly any material to infer that such amount was received by her from parents and she has returned the same. Rather, submission takes this Court to the inference that the Petitioner was having her independent source of income which she has

failed to bring to the notice of the Family Court. Apart from above, she is a successor in interest of her father's property. She has every right and share in the ancestral land. That being so, she will be succeeding to the interest of her father in the properties which are held by him. She has in categorical terms admitted about receipt of rent for and on behalf of her parents. The said fact clearly indicates that the father of the Respondent owns properties and she is collecting rent in spite of the fact that she was having an elder sibling (brother). All these facts since were not brought to the notice of the Family Court while passing the impugned order, takes this Court to the only conclusion that Respondent has her independent source of income.

9] As such, award of maintenance to the Respondent to the extent of Rs 5000/- is hereby quashed and set aside. However, having regard to the fact that monthly income of the Petitioner is Rs 35,000/-, it will be appropriate, in my opinion, to direct the Petitioner, which he has conceded, to pay monthly maintenance of Rs 4000/- per month to each of the children. As such, order impugned stands modified to the aforesaid extent.

10] Petition stands partly allowed in the above terms.

11] Respondent-wife shall be entitled to withdraw the amount after submitting the required calculation qua the maintenance amount receivable for the children. However rise in the amount of maintenance to the children shall be adjusted against maintenance payable to the children in future.

12] In view of the above, Interim Application is also disposed of.

(NITIN W. SAMBRE, J.)