

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1626 OF 2019

Mrs.Arifa Mohammed Siddique Shaikh ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Ms.Shivani S. Kadam for the Petitioner.

Mr.C.D. Mali, AGP for the Respondent-State.

Mr.K.H. Giri a/w Mr.Dhinika Jain, Mr.Gaurav Borse for
Respondent No.2.

CORAM : S.G. DIGE, J.

DATE : 6 DECEMBER 2022

P.C:-

. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. By this Writ Petition, the Petitioner has questioned
the order passed by Family Court No.3, Mumbai ('Trial Court'
for short) whereby rejecting the Application for granting interim
maintenance to the Petitioner. It is contention of the learned
counsel for the Petitioner that the Petitioner and Respondent
No.2 got married on 14 February 2014 before the Marriage
Officer. The Respondent No.2 has filed Petition for divorce
under Section 25(a) of the Special Marriage act, 1954. The

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Petitioner has filed an Interim Application for maintenance against Respondent No.2, the same came to be rejected vide order dated 4 October 2017. The Petitioner has preferred Review Application for maintenance. The said Review Application is rejected, which is under challenge.

3. It is contention of the learned counsel for the Petitioner that the Trial Court has rejected the Interim Maintenance Application on the ground that the Petitioner is well qualified and having experience of doing job, she was having an opportunity to continue the job but she refused for the same. Hence, the Trial Court has rejected the Interim Maintenance Application, which is illegal and improper.

4. The learned counsel further submit that the Petitioner is unable to maintain herself, she needs the maintenance amount for her daily expenses. Hence, requested to allow the Writ Petition.

5. It is contention of the learned counsel for the Respondent that the Respondent is jobless. The Petitioner is more qualified than the Respondent. She herself refused to execute the bond with the company and left the job. The order passed by the Trial Court is legal and valid.

6. I have heard both the learned counsel. Perused impugned order passed by the Trial Court.

7. Initially the trial Court has rejected the Interim Maintenance Application of the Petitioner on the ground that the Petitioner is equally qualified and having experience of doing job and earning handsome salary. The Petitioner has left the job of the Biotech India Company on the pretext that the Company was asking her to sign the bond. She refused for the same. Now a days, taking such bond by Company not a uncommon practice and in routine course, such bonds are being executed by the employees. Hence, rejected the maintenance Application. In my view the observation of the learned Trial Court are hypothetical, rejection of the Interim Application mere on the ground that the Petitioner is well qualified and she would get job easily and earn handsome amount is not proper approach. At the time of granting maintenance Court has to consider the present position of the Applicant. Whether she is doing job or jobless. If she gets any job, this fact can be pointed out to the concerned Court by the other side. But having high qualification and getting opportunity of the job cannot be the ground to reject the Interim Application. In that view of above, I pass following order.

ORDER

- (i) Writ Petition is partly allowed.

(ii) The order passed by the Trial Court in Interim Application No.217-A/2017 is quashed and set aside.

(iii) The matter is remanded back to the Trial Court. The Trial Court is requested to decide the Interim Application No.217-A/2017 on its own merit, preferably within two months from the receipt of this order.

(iv) Rule is absolute in the aforesaid terms.

(S.G. DIGE, J.)