

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

WRIT PETITION NO. 104 OF 2020

Mrs. Gauri Adesh Parab

.... Petitioner

Versus

Adesh Ashok Parab

.... Respondent

Mr. Rajendra Pai a/w. Akshay R. Pai i/b. Bina R. Pai for Petitioner.
Mr. Sagar A. Joshi for Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 4th FEBRUARY 2022
(through Video Conferencing)

P.C. :

1. The petitioner has preferred this petition challenging the order dated 20/09/2019 passed by the Family Court, Bandra in Interim Application No. 42 of 2017 at Exhibit 18 in M. J. Petition No. A-2859 of 2016.

2. By the impugned order, the learned Judge had rejected the Petitioner-wife's application for interim maintenance.

3. Heard Shri. Rajendra Pai, learned counsel for the Petitioner and Shri. Sagar Joshi, learned counsel for the

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Respondent.

4. Learned counsel for the petitioner states that the learned Judge has proceeded on entirely wrong footing because the application was under section 24 of the Hindu Marriage Act, 1955 and the learned Judge has based his reasoning on the parameters of section 25 of the Hindu Marriage Act, which was in respect of permanent alimony and maintenance.

5. Learned counsel for the respondent submitted that, though the learned Judge has referred to Section 25 of the Hindu Marriage Act, his reasoning mentioned in paragraph No.9 shows that the petitioner-wife was earning sufficiently and, therefore, her application was rejected. Therefore, there was nothing wrong in the impugned order.

6. I have considered these submissions. The case of the petitioner-wife is that, in the month of October 2015 she was compelled to leave her matrimonial house. It was also her case that, she was earning Rs.39000/-p.m. and her husband was earning more than Rs.2 lakhs per month. He also had additional source of income and his total earnings was Rs.3 lakhs per month.

The respondent-husband challenged this contention by contending that the petitioner had not filed documents to show her salary and she was earning sufficient salary. During pendency of that application for interim maintenance, the Petitioner-wife had filed additional affidavit on 02/04/2019 and informed the court that she had changed her job. She had also filed her payslip showing her gross salary to be Rs.52442/- and net salary being Rs.49384/-. The Respondent-husband produced his salary slip showing his gross salary in the month of April 2019 to be Rs.2,04,700/- and net pay being Rs.1,60,768/-. Importantly, the learned Judge in paragraph No.8 of the order observed thus:

“It is true that the spouse who has no source of income/ or same is insufficient, he/she is entitled to enjoy same standard of living as per spouse having higher income. In my humble opinion, this cannot be applied in each and every case. Section 25 of the Hindu Marriage Act, 1955, provides guideline to decide maintenance. It provides maintenance shall be fixed considering the respondent’s own income and other property, “conduct of the parties”. In the case at hand, parties got married on 30.05.2015. They separated within one month. The applicant has filed documents below list Exhs. 23 to 25.”

7. Bare reading of this reasoning of the learned Judge

shows that, he has proceeded to apply parameters of Section 25 of the Act. He had also referred to the conduct of the parties. As rightly pointed out by learned counsel for the Petitioner, the words 'conduct of the parties' is absent from the language of Section 24 of the Act. It was necessary for the learned Judge to apply parameters of Section 24 of the Act to the application before him and not the parameters of Section 25 of the Act.

8. In this view of the matter, the impugned order is required to be set aside and is accordingly set aside.

9. Consequently, the Interim Application No. 42 of 2017 in Petition No. A-2859 of 2016 is restored, to be decided on its merits, in the light of observations made in this order.

10. Hence, the following order:

ORDER

(i) The order dated 20/09/2019 passed by the Family Court No.5, Mumbai, in I.A.No.42 of 2017 in Petition No. A-2859 of 2016 is set aside.

(ii) Learned Judge shall decide the Interim Application No.42 of 2017 in those proceedings afresh

within a period of six months from today and if possible, even prior to that.

(iii) With these observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)