

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 2025 OF 2022

(Kishor s/o Santoshrao Jadhao ..vs.. Vidhya w/o Kishor Jadhao and d/o Shrikrishna Sakharam
Magar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Radhika Bajaj, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 18-04-2022

The petitioner-husband is assailing the order dated 04-3-2022 rendered by the learned Judge, Family Court, Buldhana whereby the petitioner is directed to pay his wife monthly interim maintenance of Rs.5,000/- (Rupees Five Thousand), with effect from the date of the application.

2. The order impugned is rendered in proceedings instituted by the husband seeking dissolution of marriage. The wife preferred an application under Section 24 of the Hindu Marriage Act asserting that she is residing at Mumbai along with her son Pranav. She contended that she is unemployed and is totally dependent on her husband for survival. The next averment is that while the husband has instituted the proceedings at Buldhana, it would be difficult for the wife to commute between Mumbai and Buldhana. The wife then averred that the husband is serving on the establishment of the Central Bureau of Investigation as

an officer and is earning monthly salary of Rs.65,000/- (Rupees Sixty Five Thousand). The wife alleged that the husband is refusing to pay even the tuition fees of Pranav.

3. In response, the husband alleged that the wife was residing at her parental home at Deulgaon Mali since 24-11-2016, that after the institution of the proceedings, she came to the house of the husband at Navi Mumbai on 17-3-2017 and started forcibly residing in the house against the wish of the petitioner-husband. The husband then averred that he is regularly depositing amount of Rs.5,000/- (Rupees Five Thousand) to Rs.7,000/- (Rupees Seven Thousand) per month in the saving account of the wife, which deposit is suppressed. The husband claimed that the tuition fees of the son have been paid by him. The husband then claimed that from the salary certain amount is deducted as the housing loan installment and that he has availed personal loan for different reasons.

4. According to the learned Counsel for the petitioner Mrs. Radhika Bajaj, after the husband instituted proceedings seeking dissolution of marriage, the wife approached the Magistrate by preferring an application under Section 12 of the Protection of Women from Domestic Violence Act (DV Act) and that vide order dated 03-8-2019, the learned Magistrate has directed the husband to pay Rs.4,000/- (Rupees Four Thousand) per

month to the wife and Rs.4,000/- (Rupees Four Thousand) per month to the elder son, who is residing with the wife. According to the learned Counsel Mrs. Radhika Bajaj, since the wife and the son, who is residing with her, have been granted interim maintenance by the learned Magistrate, the order impugned is unsustainable.

5. Considering the latter submission first, it is well settled that the wife is perfectly within her rights to seek maintenance in parallel proceedings. All that is required while dealing with the subsequent application is that the Court must be alive to the maintenance granted earlier. Perusal of the order impugned reveals that the learned Judge of the Family Court was more than aware that the wife was granted monthly interim maintenance of Rs.4,000/- (Rupees Four Thousand) earlier.

6. The learned Judge recorded a *prima facie* finding that the wife does not have any source of income and that the husband is earning a substantial salary. The learned Judge noted that the wife is residing in Mumbai and that the travelling will take a financial toll and so would the litigation expenses. It is well entrenched position of law, that at the stage of deciding an application for interim maintenance, an in-depth enquiry must be avoided. If the Court comes to the *prima facie* view that the wife is not in a position to maintain herself, an order of interim maintenance must ordinarily follow. While the learned Judge may not have recorded

elaborate reasons, I do not see anything fundamentally wrong in the view taken. Apart from the fact that in writ jurisdiction, I would be slow to interfere even with a finding which could be erroneous, unless grave miscarriage of justice is demonstrable, I have independently considered the need of the wife and I am satisfied that the quantum of interim maintenance granted is neither unjust nor arbitrary.

7. At this stage, Mrs. Radhika Bajaj would emphasize that the wife is not residing in Mumbai since 2018. Firstly, the petitioner could have placed this fact, if at all there is any truth in the assertion, before the Family Court, which is evidently not done. In any event, I am satisfied, whether the wife resides at Mumbai or any other place, there is no reason to interfere with the order of interim maintenance.

8. The petition is dismissed.

JUDGE

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