

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

Writ Petition No.4066 of 2019

Sushma w/o Surajkumar Sahu

vs.

Surajkumar s/o Manoharprasad Sahu

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

Court's or Judge's Orders

Mr. R.K. Maheshwari, Advocate for the Petitioner.

Mr. A.M. Gedam, Advocate for the Respondent.

CORAM : MANISH PITALE, J.

DATE : 17th MARCH, 2022.

By this petition, the petitioner (wife) has challenged the order dated 09/04/2019 passed by the Court of Civil Judge Senior Division, Umrer, whereby the petitioner has been granted maintenance *pendente lite* at the rate of ₹7,500/- per month. The said order was passed on an application filed under Section 24 of the Hindu Marriage Act, 1955.

02] The petitioner has approached this Court seeking enhancement of the amount of maintenance on the basis that the Court below failed to properly take into consideration the salary and sources of income of the respondent (husband) while determining the quantum of monthly maintenance. It is an admitted position that the respondent has not challenged the order passed by the Court below.

03] During pendency of this writ petition, by order dated 11/01/2022, this Court directed the parties to file

affidavits in terms of the direction given by the Hon'ble Supreme Court in the case of Rajnish vs. Neha. Accordingly, both the parties filed affidavits and supporting documents in the present proceedings.

04] Mr. Maheshwari, learned Counsel for the petitioner invited attention of this Court to the affidavits and the documents filed in pursuance of the direction given by this Court. It is brought to the notice of this Court that the respondent is working with Bharat Heavy Electricals Limited and the documents filed on record before this Court, obtained under the Right to Information Act, 2005, show that the respondent was paid salary for the months January, 2020 to October, 2020 in the range between approximately ₹61,000/- to ₹73,000/- per month. It is submitted that even if statutory deductions were to be considered, the respondent was earning substantial salary and that the amount of only ₹7,500/- per month to be paid towards maintenance, as granted by the Court below, is on the lower side and enhancement ought to be granted. It is further submitted that even if the direction given by the competent Court under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act" for short), which has attained finality, is to be taken into consideration, regarding payment of maintenance of ₹10,000/- per month, further enhancement in the present proceedings at least to the extent of ₹2,500/- per month would be justified and in terms of the settled position of law that the wife is entitled to $\frac{1}{3}$ rd of amount of salary towards her maintenance.

05] The learned Counsel for the petitioner has further invited attention of this Court to the statement made in the affidavit filed on behalf of the respondent, highlighting the fact that factually incorrect statements have been made regarding monthly income, dependency of relatives and alleged inability to pay further amount towards maintenance. Attention of this Court is also invited to cross-examination of the respondent in collateral proceedings, wherein the respondent conceded that his mother was earning pension and that one of his brothers was already employed. On this basis, it was submitted that the impugned order deserves to be modified and further enhancement in monthly maintenance be granted.

06] On the other hand, Mr. Gedam, learned Counsel for the respondent submitted that the respondent had made efforts to pay the arrears of maintenance. Attention of this Court was invited to a portion of the affidavit, wherein certain figures regarding payment of arrears have been given. It was further submitted that an amount of ₹10,000/- per month is already granted to the petitioner under the provisions of the D.V. Act and taking that into consideration, there is no case made out for modification of the impugned order for grant of enhancement. On this basis, it was submitted that the writ petition deserves to be dismissed.

07] This Court has considered the material on record, particularly the affidavits filed on behalf of the parties in terms of the directions given by the Hon'ble Supreme Court in its judgment in the case of Rajnesh vs. Neha. While, the affidavit filed on behalf of the petitioner is exhaustive and

supported with documentary material, the affidavit filed on behalf of the respondent is brief and appears to have been filed in a casual manner. The copies of salary slips placed on record by the petitioner show that they were forwarded by the employer of the respondent, wherein it is clearly stated that the monthly earning of the respondent is in the range between ₹61,000/- and ₹73,000/-. Even if the statutory deductions are to be taken into consideration, it becomes clear that the respondent is earning a reasonable amount of money. The said documents also falsify the claim of monthly income of ₹38,000/- made on behalf of the respondent in the affidavit filed before this Court. The said figure has been casually stated in the affidavit filed on behalf of the respondent. It is also claimed in the said affidavit that EMIs amounting to about ₹19,930/- are being paid by the respondent. No details are forthcoming in the affidavit, other than merely mentioning the aforesaid figure. In any case, such EMIs would not be relevant for considering the proportion of amount that could be directed to be paid towards monthly maintenance to the petitioner, out of the monthly salary being earned by the respondent.

08] There is substance in the contention raised on behalf of the petitioner on the basis of the cross-examination of the respondent in collateral proceedings, showing that the claim made in the affidavit filed by the respondent to the effect that his mother and siblings are dependent upon him, is factually incorrect and such an assertion is made only to avoid payment of reasonable monthly maintenance to the petitioner.

09] The documents filed along with the affidavit on behalf of the petitioner also show that the respondent has a four wheeler registered in his name, indicating the lifestyle that he is enjoying.

10] This Court is of the opinion that even if the respondent has been directed to pay an amount of ₹10,000/- per month under the provisions of the D.V. Act, that cannot be a factor for not considering the prayer for enhancement made on behalf of the petitioner in the present petition. It is pointed out on behalf of the petitioner that even as regards the said directions to the respondent to pay monthly amount of ₹10,000/-, he is in arrears. It is brought to the notice of this Court that the execution proceedings, being pursued by the petitioner in that context have been hampered, because the original record appears to have been misplaced. This further demonstrates the difficulty that the petitioner is facing even to enjoy the fruits of the order passed in her favour, which has attained finality. In this regard, even if the statement made in the affidavit filed on behalf of the respondent regarding deposit of certain arrears is to be taken into consideration, it is found that the same is only limited relief for the petitioner.

11] A perusal of the impugned order passed by the Court below shows that although the fact about the respondent being in service with Bharat Heavy Electricals Limited has been taken into consideration, along with the fact that the gross payment and the salary slips do show that the respondent is earning more than ₹50,000/- per month,

interim maintenance of only ₹7,500/- has been granted. Considering the material placed on record on behalf of the petitioner, which the respondent has not been able to deny with cogent material, this Court is of the opinion that a case is made out for enhancement of monthly interim maintenance payable to the petitioner. This Court is taking into consideration the admitted position that in the proceedings under the D.V. Act, the respondent has been directed to pay monthly maintenance of ₹10,000/-. Even if the said direction is to be taken into consideration, the case for enhancement for grant of interim maintenance is made out on the basis of the settled principle that the wife is entitled to at least 1/3rd of the salary of the husband towards her maintenance, further taking into account the lifestyle of the husband.

12] In view of the above, the writ petition is partly allowed. While upholding the finding of the Court below that the petitioner is entitled to monthly interim maintenance, the impugned order is modified and the respondent is directed to pay monthly interim maintenance of ₹10,000/- to the petitioner from the date of the application filed by the petitioner under Section 24 of the Hindu Marriage Act, 1955.

13] The respondent shall pay arrears to the petitioner within a period of three months from today. The amount already paid to the petitioner, if any, shall be adjusted while calculating the amount of arrears to be paid by the respondent in terms of the order passed today. Needless to

say, from April, 2022, the respondent shall pay monthly interim maintenance of ₹10,000/- per month to the petitioner.

14] The writ petition stands disposed of.

JUDGE

**sandesh*