

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

WRIT PETITION NO. 204 OF 2022

Rahul s/o Manohar Kadwe,
Age 35 years, Occupation – Job,
R/o 475, Cumulus Avenue, Apt. 34,
Sunnyvale, California, USA and
Plot No.74, Jaihind Co-op. Housing
Society, Beltarodi Road, Shyam Nagar,
Nagpur-15, India
Phone No. 9766968991
Email : armkadwe@gmail.com

.... **PETITIONER**

VERSUS

Snehal w/o Rahul Kadwe,
Age 27 years, Occupation – Service,
Education Qualf. - M.B.A., B.Tech,
R/o Plot No.11, Jagdamba Colony,
Karanja Ghadge, Wardha – 442203,
Phone No. 9511269586,
Email : snehaldewase14@gmail.com

.... **RESPONDENT**

Mr. Anil S. Mardikar, Senior Counsel assisted by Mr. A.A. Mardikar,
Counsel for the petitioner,
Mr. S.D. Chopde, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 06-05-2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. With consent, the
petition is heard finally.

2. Challenge in the petition is to the order dated 28-10-2021 rendered by the Family Court, Nagpur in Petition A-537/2020 whereby the wife and minor daughter of the petitioner are held entitled to interim maintenance from the date of the application till final disposal of the petition.

3. The operative part of the order impugned reads thus :

“Order

- i) The application Ex.11 is partly made absolute.*
- ii) The petitioner is directed to pay Rs.2,00,000/- p.m. (Rs. Two lakhs only) to the respondent and Rs.1,00,000/- p.m. (Rs. One lakh only) to minor daughter ‘Bhavya’ i.e. total Rs.3,00,000/- p.m. (Rs. Three lakhs only) towards their interim maintenance from the date of this application i.e. 30-12-2020 till final disposal of main petition.*
- iii) The petitioner shall pay Rs.3,000/- (Rs. Three thousand only) to the respondent on every date when she attends the Court in the present proceedings.*
- iv) The petitioner shall also pay Rs.10,000/- (Rs. Ten thousand only) to the respondent, towards expenditure of the present application.”*

4. The interim maintenance is granted in the proceedings instituted by the husband-petitioner herein seeking dissolution of marriage.

5. Petitioner is an Engineering Graduate from the prestigious BITS Pilani, Rajasthan and is working in the United States with Oracle. The

petitioner and respondent entered into matrimonial alliance on 02-1-2019 and from the wedlock are blessed with daughter 'Bhavya'. According to the petitioner, the respondent is also a Technology Graduate and has completed her Master in Business Administration and is working with a Pune based company and is earning Rs.45,000/- (Rupees Forty Five Thousand) per month.

6. In the context of the challenge to the order of the interim maintenance, it would be necessary to briefly note the averments in the petition.

a) The petitioner avers that he is a divorcee and the previous marriage was mutually dissolved on 23-9-2016. The petitioner alleges that while he and the respondent entered into matrimonial alliance, the respondent was apparently forced into marriage and that she had a soft corner for a relative, which proved to be the stumbling block in the marriage and constrained the petitioner to seek dissolution of marriage. The petitioner avers that three months after the institution of the proceedings for dissolution of marriage, the respondent-wife lodged complaint against the petitioner and his family members in the Karanja Police Station alleging dowry demand. The respondent further alleged in the complaint that she was kept in dark about the first marriage of the petitioner. The petitioner then avers that in the proceedings for

dissolution of marriage, the respondent filed application under Section 24 of the Hindu Marriage Act (Act) on 30-12-2020 seeking interim maintenance of Rs.10,00,000/- (Rupees Ten Lac) per month. It is averred that the said application (Exhibit 11) was received by the counsel for the petitioner on 16-2-2021. Due to the Covid-19 pandemic, the functioning of the Courts was severely affected from March, 2021 to July, 2021 and it was only from 25-7-2021 that the regular functioning of the Courts resumed. The petitioner avers that due to Covid-19 pandemic infection and other health issues in the family, the petitioner was in great stress. The petitioner states that the respondent filed income and assets affidavit on 05-7-2021. The petitioner then avers that the In-charge Court heard the learned counsel for the respondent on 09-10-2021 and posted the matter for passing order on 23-10-2021. The petitioner preferred an application dated 23-10-2021, which is styled as “application for dispensing with the affidavit of the petitioner in reply to the application under section 24 of the HM Act, 1956 and assets and liabilities affidavit”. The said application was filed since the signature and the affidavit of the petitioner could not be procured in view of his residence in the United States. The learned Judge of the Family Court rejected the application preferred by the petitioner for dispensing with the affidavit by order dated 23-10-2021, the relevant portion of which reads thus :

“4. Upon hearing, I have gone through the record. It appears that the respondent-wife has filed application under section 24 of the Hindu Marriage Act, 1955 for grant of maintenance pendent lite. This application is filed on 30-12-2020. The copy of this application appears to be received by the petitioner on 16-2-2021. Since then, the petitioner did not bother to take a pain to file his reply and discloser affidavit of Assets and Liabilities. The learned advocate for the petitioner today filed the reply and discloser affidavit without the signature of the petitioner and without affidavit and seeks to dispense it. However, I do not find any reason to dispense it. Since from the date of filing the application Exhibit 11 for maintenance pendent lite about 10 months has been passed and sufficient time was given to the petitioner, but he fails to file his reply. In this way, the present application is devoid of merit. Hence, rejected.”

b) The learned Judge then passed the order impugned, the operative part of which is noted supra.

c) The learned Judge noted the submissions canvassed on behalf of the respondent-wife, *inter alia*, that she was harassed for dowry, humiliated for giving birth to female child and that her character was questioned. The learned Judge noted the contention of the wife that her husband was earning Rs.15,00,000/- (Rupees Fifteen Lac) per month and that he is in a position to pay the wife and the children Rs.10,00,000/- (Rupees Ten Lac) per month. The learned Judge relied on the affidavit of disclosure of assets and liabilities filed by the wife, in which she categorically asserted that she has no source of income and that her husband is earning Rs.15,00,000/- (Rupees Fifteen Lac) per

month. The learned Judge then recorded *prima facie* finding that the husband, who is working in California, United States of America, has sufficient means to provide interim maintenance of Rs.2,00,000/- (Rupees Two Lac) per month to the wife and Rs.1,00,000/- (Rupees One Lac) per month to the minor daughter Bhavya with effect from the date of the application.

7. The learned Senior Counsel appearing on behalf of the husband Mr. Anil Mardikar would argue that the petitioner was denied sufficient opportunity to place on record the affidavit of disclosure of income and assets. The extension of the submission is that the learned Judge did not appreciate the import and implication of several orders passed by the Hon'ble Supreme Court to deal with the extraordinary situation prevailing due to the Covid-19 pandemic, and proceeded to decide the application under Section 24 of the Act in undue haste. Mr. Anil Mardikar would submit that the interim maintenance awarded is grossly disproportionate, to the income of the husband and further to the financial needs of the wife and the child. Mr. Anil Mardikar would invite my attention to certain documents which are placed on record of the petition, and which documents were not on record of the Family Court. I am consciously refraining from considering the implication or significance of the documents, particularly in view of the order which I

propose to pass, lest either party suffers prejudice. However, considering the admitted position on record that the first marriage of the petitioner-husband was dissolved, brief reference may be made to the findings and observations in the judicial order rendered by the Superior Court of California, County of San Mateo and copy of which order is placed on record in the present petition, which records the monthly income of the husband as 12000 dollars as in September, 2016.

8. While Mr. Anil Mardikar seriously criticized the manner of disposal of the application under Section 24 of the Act, the learned Counsel Mr. S.D. Chopde has a counter narrative. Mr. S.D. Chopde would invite my attention to the affidavit-in-response dated 15-1-2021 filed by the wife in which the following assertions are incorporated :

The husband informed the wife that he has instituted petition seeking dissolution of marriage by sending a WhatsApp message. The wife appeared before the Family Court without waiting for formal notice and on 04-11-2020 the matter was referred to Marriage Counsellor. While the wife appeared before the Counsellor, the husband did not and on the next date of hearing on 30-12-2020 the wife preferred application for grant of interim maintenance. The husband was absent on 30-12-2020 and the hearing was adjourned to 16-2-2021. The counsel for the husband received copy of the interim

maintenance application on 18-2-2021, although the copy was available on record since 30-12-2020. The husband remained absent on the scheduled date of hearing and the matter was adjourned to 20-3-2021. The husband did not file reply to the application for grant of interim maintenance nor sought time. The hearing was adjourned to 18-5-2021 and again neither was the reply filed nor was time sought. On 05-7-2021 the wife filed written statement along with affidavit of disclosure of assets and liabilities and further filed application seeking direction to the husband to handover original documents and file on record his affidavit of disclosure of assets and liabilities. The hearing was adjourned to 12-8-2021 on which date the husband was present along with Counsel. However, neither reply was filed nor was time sought and the hearing was adjourned to 17-9-2021. Again on 17-9-2021 the husband did not file reply nor did he seek time to file reply and it was in such a situation that the matter was taken up by the In-charge Court at the request of the wife. The hearing was adjourned to 09-10-2021 on which date the learned Counsel for the husband was present. The In-charge Court heard the learned Counsel for the respondent-wife and posted the matter for passing order on 23-10-2021. After the matter was closed for order, the counsel for the husband moved an application for dispensing with the affidavit to the reply and

the affidavit of disclosure of assets and liabilities, which was rejected by the learned Judge of the Family Court.

Mr. S.D. Chopde would argue that it is crystal clear from a cursory reading of the order-sheet, that the petitioner-husband did not avail the numerous opportunities given to him to contest the application under Section 24 of the Act. Mr. S.D. Chopde would submit that the directions issued by the Hon'ble Supreme Court in the context of the Covid-19 pandemic, cannot come to the rescue of the husband, who despite several opportunities deliberately did not avail the opportunities to join issues with the wife on the aspect of payment of interim maintenance.

9. I have scrutinized the material on record in the context of the submissions canvassed by the rival parties. The order-sheet placed on record is eloquent. The averments in the affidavit-in-response dated 15-1-2021, which I have elaborately noted in paragraph 8 supra, are substantiated by the order-sheet of the proceedings. In my considered view, there was ample opportunity available to the husband to file on record his reply to the application under Section 24 of the Act and the affidavit of disclosure of assets and liabilities. That the husband was then residing in United States of America, was irrelevant in the context of the requirement of signature and affirmation. Pertinently, neither the

reply nor the statement of disclosure of assets and liabilities is signed, muchless affirmed, by the husband and the said documents are signed by the counsel.

10. The reason put forth on behalf of the husband for placing on record the reply and the statement of disclosure of assets and liabilities, without the signature muchless verification or affirmation, is the inability to attend the Indian Embassy to swear the document. The learned Judge of the Family Court rightly noted that the said justification is not acceptable since as many as ten long months had passed since the date of filing the application for interim maintenance.

11. While from strict legalistic perspective, the argument of denial of opportunity is fragile, I am nonetheless inclined to balance the equities and to order fresh hearing and decision on the application under Section 24 of the Act. Considering the delicate and sensitive nature of the litigation, the fact that parties have placed on record certain documents the import and implication of which will have to be addressed by the learned trial Judge, and the fact that while giving an opportunity to the husband to contest the application under Section 24 of the Act on the basis of sworn reply and affidavit of disclosure of assets and liabilities, the opportunity can be made conditional upon the

husband making payment of interim maintenance as *ad hoc* arrangement, I am impelled to quash and set aside the order impugned subject to the certain conditions.

12. The order impugned dated 28-10-2021 in Petition A-537/2020 is set aside and the learned Judge of the Family Court is requested to decide the application under Section 24 of the Act afresh after giving opportunity to the stakeholders to file additional/further material on record. The remand is subject to the condition that the petitioner-husband deposits in the Family Court maintenance of Rs.1,50,000/- (Rupees One Lac Fifty Thousand) per month with effect from the date of the application under Section 24 of the Act. If the amount of maintenance is not deposited within eight weeks as directed supra, the order impugned shall stand revived.

13. The petition is partly allowed in the afore-stated terms.

JUDGE

adgokar