

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.256 OF 2023

1. Mahendra S/o Arvind Ganjewar
 2. Sunanda w/o Arvind Ganjewar
- ... PETITIONERS

VERSUS

Shraddha w/o Mahendra Ganjewar

... RESPONDENT

WITH
CRIMINAL WRIT PETITION NO.255 OF 2023

1. Mahendra S/o Arvind Ganjewar
 2. Sunanda w/o Arvind Ganjewar
- ... PETITIONERS

VERSUS

Shraddha w/o Mahendra Ganjewar

... RESPONDENT

Mr. B. N. Gadegaonkar, Advocate h/f Mr. S. R. Bagal, Advocate for the
petitioners
Mr. S. V. Kulkarni, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 4th DECEMBER, 2023

P.C. :-

1. These petitions take exception to the orders passed by the learned Trial Court in PWDVA No. 18 of 2020 whereby interim maintenance application filed vide Exhibit 9 by respondent came to be allowed directing the petitioner to pay Rs.7,000/- per month by way of maintenance to the respondent. Another order came to be passed by the Trial Court whereby the petitioner was prevented from cross examining

respondent on the ground that he has not paid interim maintenance. Order passed below Exhibit 24 indicates that the learned Trial Court made payment of interim maintenance as pre condition for cross examination of respondent.

2. Learned counsel for the petitioner submits that the learned Trial Court has committed error in granting interim maintenance Rs.7,000/- by relying upon invitation card which purportedly indicates that the petitioner is having business in the name and style Shree Swami Traders and Ganjewar Company. It is submitted that the petitioner is labourer and that he has responsibility of his mother as well as two children. It is further contention that the said business belongs to his uncle.

3. Learned counsel for the respondent opposed the said contention by raising issue with regard to the pleadings made before the Trial Court. It is his contention that before the Trial Court nothing is placed on record by the petitioner indicating his income nor any evidence to show that the said businesses do not belong to him.

4. Perusal of the impugned order passed below Exhibit 9 indicates that the learned Trial Court has taken into consideration pleadings of the parties and documents evidence placed on record. Prima facie finding is

recorded by the Trial Court to the effect that the petitioner is having businesses. In order to rebut the said contention there no material is placed on record by the petitioner. Though the petitioner has claimed that he is labourer, he has not even mentioned in his reply as to the income which he earns. Having regard to the prima facie material placed on record no infirmity is found in the order impugned of granting interim maintenance. The challenge to the same, must fail.

5. As far as the right of the petitioner to cross examine the respondent is concerned, without prejudice, learned counsel for the petitioner, on instructions, makes statement that 50% of amount of arrears towards interim maintenance would be deposited before the Trial Court and petitioner may be allowed to corss-examine witnesses. Needless to record that it is open for respondent to recover the remaining amount of maintenance as per law.

6. Considering voluntary statement made, on instructions, by the learned counsel for the petitioner about deposit of the 50% amount, this Court finds it appropriate to permit the petitioner to cross examine the respondent as well as any other witness which would be examined by respondent before Trial Court. Learned Trial Court to ensure that the amount undertaken as recorded above, is deposited before petitioner is

permitted to cross examine the witnesses. Trial Court also to ensure that the petitioner does not delay the hearing of proceeding in any manner and it will be open for the learned Trial Court to pass appropriate order as per law if it's found so. Respondent to appear before the Trial Court on the next date of hearing to face cross examination. If petitioner fails to deposit the amount or fails to cross examine the respondent on that day, it is open for the Trial Court to close the evidence of respondent.

7. Petitions stand disposed of in aforesaid terms.

(R. M. JOSHI, J.)

ssp