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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12651 OF 2022

Dattarao Rakhmaji Khating
Age – 69 years, Occ – Agril
R/o Sunegaon, Taluka – Gangakhed
District - Parbhani

PETITIONER

VERSUS

1. Sandhya d/o Limbaji Kadam @
Sandya Deepak Khating
Age – 38 years, Occ – Household
R/o Limbaji Kadam's House
Ganesh Par, Parli V.
Taluka – Parli, District – Beed
2. Ranubai Dattarao Khating
Age – 60 years, Occ – Household & Agri
R/o Suyog Colony, Gangakhed
Taluka – Gangakhed
District – Parbhani
3. Rajabhau @ Raju Dattarao Khating
Age – 38 years, Occ – Service & Agril
R/o Suyog Colony, Gangakhed
Taluka – Gangakhed,
District - Parbhani

RESPONDENTS

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Mr. Anil U. Pawar, Advocate for the petitioner
Mr. Rushikesh P. Totala, Advocate for respondents No.1 to 3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th AUGUST, 2023

ORDER :

1. Being aggrieved by the order dated 16th August, 2018
passed by learned 3rd Joint Civil Judge, Junior Division,

Gangakhed below Exhibit-5 and by learned 2nd Joint Civil Judge, Junior Division, Gangakhed below Exhibit-40-A in Regular Civil Suit No. 299 of 2017, the petitioner has filed present writ petition under Article 227 of the Constitution of India.

2. Respondent No.1 – Daughter in law of the petitioner has filed the suit for permanent alimony and injunction. In the suit, application Exhibit-5 is filed by the plaintiff-respondent claiming interim maintenance @ Rs.10,000/- per month. By order dated 16th August, 2018, the Trial Court partly allowed the application Exhibit-5 and directed the petitioner – defendant No.1 to pay interim maintenance @ Rs.2000/- per month to the plaintiff-respondent, from the date of the suit till its final decision. The said order is unsuccessfully challenged by the petitioner in Miscellaneous Civil appeal No. 13 of 2018.

3. The petitioner, thereafter filed application Exhibit-40-A, in Regular Civil Suit No.299 of 2017 praying to set aside the order passed below Exhibit-5, contending that at the time of hearing of application Exhibit-5, the petitioner had no documentary proof to show that the plaintiff has sufficient source of income, however, now he has got the documentary proof to show that the plaintiff has sufficient source of income. Though the documentary proof of income was sought to be produced before the Appellate Court,

it was not accepted and since the plaintiff has sufficient source of income, interim maintenance awarded to her is liable to be quashed set aside.

4. The plaintiff-respondent opposed the said application stating that though appeal filed by the petitioner challenging interim maintenance is rejected by the Appellate Court, the petitioner has not paid a single rupee to the plaintiff-respondent so far. She reiterated that she has no source of income and the 37 Are land received by her in partition is not in her possession and, therefore, she has no source of income. The Trial Court rejected the application Exhibit-40-A. Hence, the present writ petition.

5. Heard learned advocate for the petitioner and the learned advocate for respondent No.1. Perused the memo of writ petition, its annexures and the impugned orders.

6. Learned advocate for the petitioner has assailed the impugned orders passed below Exhibit-5 and Exhibit-40-A, by relying on section 19 of the Hindu Adoption and Maintenance Act. He submits that the first order is obtained by the plaintiff-respondent No.1, by suppressing material facts. He further submits that in the light of the fact that 37 Are land is standing

in the name of the plaintiff - respondent No.1, it cannot be said that she is unable to maintain herself. He, therefore, submits that the impugned orders are liable to be quashed and set aside, by allowing the writ petition.

7. Per contra, learned advocate for respondent No.1 supports the impugned orders.

8. Admittedly, the suit is filed for maintenance, in which interim maintenance order is passed by the Trial Court, after considering the rival contentions. Thereafter, the petitioner filed application Exhibit-40-A claiming that respondent No.1 has 37 Are land which is received by her in partition from her father. However, there is nothing on record to show that respondent No.1 is getting any income from the said land. Merely because land is standing in her name, it does not mean that respondent No.1 is getting any income from the said land. Fact remains that though the order of granting interim maintenance is passed on 16th August, 2018, till date the petitioner has not paid a single rupee to respondent No.1 towards interim maintenance. This conduct of the petitioner dis-entitles him from any equitable relief.

9. Apart from the above, Trial Court has observed in the impugned order passed below Exhibit-40-A that *prima facie* defendant No.1 – the petitioner has not brought on record any documentary proof showing that the plaintiff gets income from 37 Are agricultural land. Therefore, at this stage, it cannot be concluded that the plaintiff has sufficient source of income to maintain herself and the maintenance awarded to her is interim arrangement and it is not final order or decree. Whether the plaintiff has sufficient source of income or not would be clear after the parties adduce their evidence and the petitioner is at liberty to prove income source of the plaintiff during the trial and it would be premature at this stage to give finding on the subject. By observing this, the Trial Court has held that no change in circumstance is brought by the petitioner and hence, the application Exhibit-40-A is rejected by the Trial Court.

10. There is no perversity or illegality in the orders impugned in the present writ petition. While exercising jurisdiction under Article 227 of the Constitution of India, this Court is not sitting as appellate court. No case is made out by the petitioner to exercise extraordinary writ jurisdiction to cause interference in the impugned orders.

11. In the result, writ petition is dismissed. Considering the fact that the suit is of the year 2017, hearing of the suit is expedited.

[NITIN B. SURYAWANSHI]
JUDGE

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