

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

43 WRIT PETITION NO.13344 OF 2021

DEEPIKA PRATIK VYAS
VERSUS
PRATIK PRADEEP VYAS

...

Advocate for Petitioner : Mr. Surve Hemant
Advocate for Respondents : Mr. V D Hon Sr. Counsel i/b
Mr Hon Ashwin V.

...

AND

WRIT PETITION NO.14737 OF 2021

PRATEEK PRADEEP VYAS
VERSUS
DEEPIKA PRATIK VYAS.

...

Advocate for petitioner : Mr. V D Hon Sr. Counsel i/b Mr
Hon Ashwin V.
Advocate for respondent : Mr. Surve Hemant

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CORAM : SHARMILA U. DESHMUKH, J.
Dated : January 13, 2023

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PER COURT :-

1. These are the counter petitions filed by the husband Pratik and wife Deepika challenging the order dated 5.8.2021 passed by the Family Court, Aurangabad in an interim application under section 24 of the Hindu Marriage Act.

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2. Deepika had instituted proceedings u/s 13 (1) (ia) of the Hindu Marriage Act seeking dissolution of the marriage solemnized on 23.11.2017 on the ground of cruelty and an interim application came to be filed by Deepika seeking interim maintenance of Rs.50,000/- and travelling expenses of Rs.200/-. Pratik filed his detailed reply and opposed the application. The documents were produced by both the parties and on consideration of salary of Pratik, family Court granted interim maintenance of Rs.15,000/- p.m. to Deepika while rejecting the prayer of litigation expenses and traveling expenses.

3. Deepika and Pratik aggrieved by the said order are before this Court; while Dipika seeks enhancement of maintenance, Pratik seeks reduction of the amount of maintenance.

4. Heard Mr. Hon, the learned senior counsel appearing for the petitioner-husband and Mr. Surve, learned counsel appearing for the wife Deepika.

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5. Learned counsel Mr. Surve appearing for the wife submits that the husband is working in a company by name Deloitte Consulting Private Limited, Hyderabad and Bank account, which has been produced on record by the husband shows that salary per month credited in the account ranges from Rs.39,000/- to 1,12,000/- approximately. He has invited attention of this Court to the various entries in the bank statement of the husband to show that there is no fixed salary and, therefore, the amount of the interim maintenance has to be calculated by taking into consideration the highest salary, which was for the month of August 2018 amounting to Rs.1,12,284/-. He would further urge that the respondent has no source of income and, as such, the Family Court erred in granting interim maintenance of Rs.15,000/- p.m. He would further contend that the wife is also entitled to litigation expenses and traveling expenses, which has been wrongfully rejected by the family Court.

6. In support of his contention, learned counsel has relied upon a decision of this court in a case of **Nanda w/o Devidas Pawar Vs. Devidas s/o Shyamrao Pawar in Writ Petition No.4017 of 2015 dated 7.10.2022**, wherein this Court held that denying litigation expenses to wife on the ground that she can avail legal aid facility is contrary to the letter and spirit of Section 24 of the Act and even if it is accepted that wife was staying at Aurangabad, she has to travel from her residence to Family Court and incur traveling expenses.

7. Per contra, learned Senior Counsel for the husband submits that the Family Court has failed to take into consideration the fact that the matrimonial cohabitation between petitioner and respondent was only for a period of 15 days and Pratik has to maintain his parents and as such while considering the issue of grant of interim maintenance, the said fact of dependents assumes importance. He would further urge that wife comes from a well known family and is holding degree of MBA and according to learned senior

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counsel, she is working at Poddar International School, Aurangabad. He would also urge that the Family Court ought to have considered that the husband's parents are staying in Mumbai and husband is staying in Hyderabad and as such husband has to maintain two establishments. He would urge that amount of Rs.15,000/- granted by the Family Court is on higher side and needs to be reduced.

8. I have considered the rival submissions of the parties. An application has been filed for interim maintenance and at the stage of grant of interim relief, the trial court has to be prima facie satisfied about the income of the parties and then decide the amount of interim maintenance by taking into consideration the source of income and permissible deductions. It is a matter of trial as to the actual income of the husband and merely because there are bank entries as regards the salary of the husband, the same cannot constitute a ground to seek enhancement of maintenance by taking into consideration the highest salary. It is also to be

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noted that as against amount of Rs.1,12,284/- which is shown for the month of August, 2018 an amount of Rs.39,136/- is shown as salary for the previous months. As such, considering the average salary of the husband at around Rs.60,000/- p.m. the family Court granted interim maintenance of Rs.15,000/- p.m. and I do not find any infirmity in the order of the Family Court as it is settled position that grant of interim maintenance is a discretionary relief and final amount of maintenance will be determined after the trial and after considering all material on record. As such, I am not inclined to increase the amount of maintenance as sought for by the wife.

9. As regards the claim of the wife for the litigation expenses is concerned, there is no quarrel with the proposition laid down in the case of Nanda Pawar (supra). However, at this stage, I am not inclined to issue any directions for grant of any litigation expenses. The said issue is kept open to be decided by the Family Court at the time of the passing of the judgment.

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10. As far as the claim of the husband for reduction of the amount of maintenance is concerned, the husband has not been able to place any material on record to show that the wife is serving in Poddar International School and has any source of income, as such. In absence of any material on record, the family Court, while taking into consideration the salary of Rs.60,000/- has granted interim maintenance of Rs.15,000/- which discretion cannot be said to be arbitrary.

11. Considering the above, there is no merit in both these petitions. The same are accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

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