

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

WRIT PETITION NO. 186 OF 2023

Gopalsing Devichand Dhavaliya .. Petitioner

Versus

Sarita W/o Gopalsing Dhavaliya .. Respondent

Shri M. P. Bhaskar, Advocate for the Petitioner.

Shri Sayyed Tauseef Yaseen, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 25TH OCTOBER 2023.

FINAL ORDER :

. Heard learned counsel for both sides finally at the admission stage.

2. This petition is directed against an interim maintenance order dated 29.04.2019 passed by the learned 07th Jt. Civil Judge Senior Division, Jalna below Exhibit 15 in H. M. P. No. 281 of 2017 thereby directing the petitioner to pay Rs. 3,000/- per month to the respondent towards maintenance pending the petition for dissolution of marriage.

3. The learned counsel for the petitioner submits that the respondent has filed a separate proceeding under the provisions of the Protection of Woman from Domestic Violence Act, 2005 (for short "D.V. Act") bearing PWDVA No. 652 of 2017 before the learned Judicial Magistrate First Class at Aurangabad. An

order of interim maintenance of Rs. 3,000/- per month payable to the respondent and Rs. 1,000/- per month for daughter payable from 15.11.2017 is passed on 22.10.2018. Suppressing this interim order of maintenance, an application Exhibit 15 is filed under Section 24 of the Hindu Marriage Act.

4. It is further submitted that by the impugned order the petitioner is directed to pay Rs. 3,000/- per month to the respondent and Rs. 5,000/- towards the expenses of the proceedings. Without taking into account the interim maintenance awarded in the criminal proceedings referred above, the impugned order is passed which is arbitrary and vulnerable. The learned counsel for the petitioner would submit that he is directed to pay total Rs. 7,000/- per month to the respondent and the daughter which is taxing. He submits that the petitioner has meager holding of agricultural land and already suffered financial crisis. He seeks indulgence in the impugned order.

5. The learned counsel for the petitioner has drawn my attention to the interim order dated 07.01.2023 passed in the present matter. He was directed to pay arrears of Rs. 1,25,000/- to the respondent. He makes statement that the compliance has been made by paying Rs. 1,25,000/- to the respondent. He seeks reliance on the judgment of the Supreme Court in the matter of **Rajnesh Vs. Neha and another** reported in **(2021) 2 SCC 324**.

6. Per contra, the learned counsel for the respondent would

oppose the petition and the submissions. He submits that the proceedings for dissolution of marriage are on the verge of conclusion. The next date is kept on 27.10.2023. There is no propriety in interfering with the impugned order. He would further submit that the petitioner is found to be in arrears of additional Rs. 1,50,000/-. He is directed to pay Rs. 75,000/-. He submits that the petitioner is a rank defaulter and does not deserve any discretion.

7. I have considered the submissions canvassed by the learned counsel for the respective parties across the bar.

8. The respondent has initiated the proceedings before the Judicial Magistrate First Class, Aurangabad bearing PWDVA No. 652 of 2017 under the provisions of the D. V. Act. By way of interim maintenance an order is passed on 22.10.2018, which is placed on record. The respondent is already awarded interim maintenance of Rs. 3,000/- per month and her daughter is awarded Rs. 1,000/- per month payable from 15.11.2017. An application Exhibit 15 U/Sec. 24 of the Hindu Marriage Act is placed on record. The respondent has not disclosed the pendency of the proceedings before the criminal court. When an interim application Exhibit 15 was heard, interim maintenance awarded in the criminal proceeding has not been disclosed. The impugned order is silent on that count.

9. The respondent should have disclosed the interim maintenance awarded in parallel proceedings. The learned

counsel for the petitioner has rightly contended that there is perversity in the impugned order due to suppression of material facts. The petitioner has rightly referred to the judgment of the Supreme Court in the matter of **Rajnesh Vs. Neha and another** cited supra. Paragraph Nos. 50 to 61 of the said judgment cover the issue. Principles laid down in concluding paragraph Nos. 128.1 and 128.2 are applicable to the present case.

10. The petitioner is held liable to pay Rs. 6,000/- per month to the respondent and additionally Rs. 1,000/- to his daughter. The petitioner thus has to pay Rs. 7,000/- per month towards interim maintenance. Besides that he has paid Rs. 1,25,000/- as directed by the interim order. I deem it appropriate to reduce the interim maintenance payable to the respondent from Rs. 3,000/- per month awarded vide impugned order to Rs. 1,000/- per month. The impugned order to the extent of quantum of interim maintenance is modified. I therefore pass following order.

O R D E R

A. The writ petition is partly allowed.

B. The impugned order dated 29.04.2019 passed by the learned Civil Judge Senior Division, Jalna below Exhibit 15 in H.M.P. No. 281 of 2017 is modified by reducing the amount of Rs. 3,000/- per month to Rs. 1,000/- per month.

C. The rest of the order stands unaltered.

D. The amount of Rs. 1,25,000/- paid by the petitioner during the pendency of present matter shall be adjusted towards the arrears payable to the respondent.

E. The writ petition is disposed of in above terms.

[SHAILESH P. BRAHME, J.]

bsb/Oct. 23