



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4249 OF 2022

Vinod Ramdarsh Vishwakarma

...Petitioner.

Versus

Sarita Vinod Vishwakarma.

..Respondent.

Mr. Ashok Chopra for the petitioner.

Ms. Manjula Rao, Mr. Rohan Deshmukh, Ms. Ashi Rane for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : December 12, 2023.

P. C. :

1. Petition challenges the order dated 3rd December 2018 passed by the Family Court, Mumbai directing the petitioner herein to pay a sum of Rs.25,000/- per month to the respondent-wife towards the interim maintenance from the date of application till the disposal of main petition and on production of educational expenses receipts as well as medical expenses of special child, to pay the same to the respondent.

2. Heard learned counsel appearing for the respective parties.

3. The only submission canvassed by learned counsel appearing

for the petitioner is that subsequent to the passing of impugned order, the petitioner is suffering from blindness and other medical ailments. He points out the disability certificate annexed at page 141 of petition as well as other medical record to indicate that the petitioner is financially incapable to pay the maintenance amount.

4. Upon a query by this court as to the source of his income for his own survival, learned counsel for the petitioner submits that the petitioner is dependent on his family which is carrying on the family business.

5. Ms. Manjula Rao, learned counsel appearing for the respondent points out that the petitioner herein has a paramour and children and, as such, is disinclined to pay the maintenance. She further points out that the respondent-wife has to take care of two daughters as well as a special child, whose expenses are substantial and being a single woman, she is unable to make both ends meet.

6. Considered the submissions and perused the record.

7. By the impugned order, the Family Court has directed a reasonable amount of maintenance of Rs.25,000/- per month to be paid to the respondent –wife and to bear the educational and medical

expenses of special child. On the merits of the matter, there is no submission advanced and only submission is that subsequent to the passing of impugned order, the petitioner is suffering from certain disabilities. If the events are subsequent to the passing of order, no fault can be found with the impugned order. It is open for the petitioner to apply for modification of the said order if there is change in the circumstances subsequent to the passing of impugned order.

8. It needs to be noted that despite the order being passed in the year 2019, the petitioner herein has shirked his responsibility not only towards the wife but also towards the special child. It is not expected of the father that he would abandon his child in this manner. Even if the quantum of maintenance is disputed by the petitioner, he should have paid the maintenance according to his own capability pending adjudication of the present petition. However, there is complete refusal on the part of father to meet the financial needs of his special child.

9. During the hearing, a submission was canvassed that the custody of special child will be taken by the petitioner. However, being asked to confirm the same, learned counsel for the petitioner submits that he is unable to contact his client, who according to him is attending the marriage function out of town. This means that the

petitioner is not disabled from leading his day-to-day life and only for the purpose of payment of maintenance the disability is being put forward.

10. Be that as it may. As there is no submission canvassed on the merits of the matter, petition fails and stands dismissed.

11. Learned counsel appearing for the respondent submits that within a period of one week from today, an execution application will be filed for arrears of maintenance, which according to her are in the sum of Rs.26 lakh. Considering that it is the need of special child, for which maintenance is required, the executing court is requested to decide the execution application expeditiously and in any event within a period of four weeks from the date of filing of such execution application. The executing court is requested not to grant unreasonable adjournment in the matter and if need be, to take up the proceedings on day-to-day basis.

[Sharmila U. Deshmukh, J.]