



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3315 OF 2023

Sachin Ravaso Mali

... Petitioner.

Versus

Sou. Radhika Sachin Mali

... Respondent.

Mr. Prashant R. Suryawanshi i/by Mr. Gajanan M. Savagave for the
Petitioner.

Mr. Rushikesh G. Patil for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : November 03, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 15th October, 2022 granting the respondent-wife interim maintenance of Rs.4,000/- p.m., and medical expenses at Rs.2,000/-p.m. i.e. total of Rs.6,000/- from the date of application till the decision of main petition.

3. Learned counsel appearing for the petitioner submits that the petitioner though a graduate, in the absence of proper employment, is working in the Govardhan Men's Collection Shop and earning a monthly salary of Rs.4,000/-. He would submit that same is certified by the shop-owner on the letterhead and the income tax

certificate issued by the Tahsil Office, Sangali, indicates a sum of Rs.55,000/- as his annual income for the year 2021-2022. He submits that the Family Court without any basis have considered the income of husband at Rs.20,000/- and has granted the interim maintenance of Rs.4000/- p.m. and medical expenses of Rs.2000/- p.m.

4. *Per contra*, learned counsel appearing for the respondent-wife submits that respondent-wife is suffering from HIV and requires medical treatment. He would further submit that the petitioner's father is an agriculturist and from the agricultural produce an income of Rs.2,50,000/- to 3,00,000/- is being annually generated. He further submits that as regards the employment in the shop, the petitioner is drawing a salary of Rs.15,000/-.

5. Considered the submissions and perused the documents.

6. In compliance of the order of the Apex Court in the case of ***Rajnish Vs. Neha and Another***, reported in ***(2021) 2 SCC 324***, an affidavit of assets and liabilities has been filed by the petitioner. In the affidavit, it has been stated that his monthly income is Rs.4000/- and that in addition thereto, by way of working as agricultural labour, he is getting a sum of Rs.5,000/- per year. The Family Court has erroneously recorded that the salary of the petitioner is

Rs.4,500/- p.m. whereas, it is Rs.4,000/- p.m.

7. Apart from the bare words of the respondent-wife, there is no material to show that there is any income from the agricultural land as claimed or that the income of the petitioner-husband is earning Rs.15,000/- p.m. from working as an employee in the shop. Generally, the amount of the interim maintenance is prima facie assessed on the material which has come on record, however, the same cannot be arbitrary. There is no material to support the finding of the Family Court that the husband is earning more than Rs.20,000/- p.m. from all his sources. On the contrary, the documents produced by the petitioner-husband shows his salary to be Rs.4,500/- p.m. and an income of Rs.55,000/- yearly.

8. The Family Court in addition to grant of the interim maintenance of Rs.4,000/- p.m. has granted medical expenses of Rs.2,000/-. The impugned order does not indicate that there was any material in the form of medical reports to indicate the ailment of the respondent or and/or the medical expenses been incurred by her.

9. In view of the above, although the impugned order is as regards the interim maintenance, considering the material which has come on record, in my opinion, the same is on the higher side. In

view of the above, the impugned order dated 15th October, 2022 is modified and the petitioner-husband shall pay interim maintenance of Rs.4,000/- p.m. to respondent-wife from the date of application i.e. 5th January, 2021 till the decision of the main petition on merits and in addition as directed by the impugned order shall pay Rs.200/- per date, for attending the case at Family Court, Kolhapur towards the conveyance amount. Clause (ii) of the impugned order as regards the payment of litigation expenses of Rs.5,000/- to the respondent-wife is to be undisturbed.

10. Writ Petition is allowed in the above terms.

(Sharmila U. Deshmukh, J.)