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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.8524 OF 2023

Balkrishna R. Bangera

...Petitioner

V/s.

Mrs.Kavita B. Bangera

...Respondent

Mr.Sarvesh Tiwari i/b Ms.Suvarna B. Telgote for the Petitioner.

Mrs.Kasturi Kakera for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 14TH DECEMBER, 2023.

P.C. :-

1. This Writ Petition is filed by the Petitioner (husband) thereby challenging the order dated 15 June 2018 passed by the Civil Judge (Senior Division), Vasai on Exhibit - 8, in Marriage Petition No.288 of 2016 to the limited extent of granting the legal expenses as directed in clause 3 of the order dated 15 June 2018 and also the order dated 15 February 2022 passed by the District Court, Vasai, thereby modifying the amount of legal expenses to the extent of Rs.3,000/- per month, in Miscellaneous Civil Appeal No.9 of 2022.

2. The Petitioner has filed Marriage Petition No.288 of 2016 under the provisions of Section 13(1) (i-a) of the Hindu Marriage Act, (for short "H.M. Act ") seeking divorce from the Respondent (wife).

3. In the said divorce petition, the Respondent (wife) filed an application under the provisions of Section 24 of the Hindu Marriage Act, thereby seeking interim maintenance for herself and for the daughter, of Rs.25,000/- per month and also sought a sum of Rs.25,000/- towards the litigation expenses. In the said Interim Application filed under Section 24 of the Hindu Marriage Act, the Respondent (wife) stated that the Petitioner (husband) is the owner of three cars. Out of said three cars; two cars i.e. (1) Wagon-R, (2) Hyundai i10, are given on rent to one Mr.Amar Sorke,, Proprietor of Alpha Company, Mumbai, at the rate of Rs.60,000/- per month. The third car which is Innova is being rented out to the customers of his choice. It was further submitted that the total income of the Petitioner (husband) of three cars together is around Rs.75,000/- to 80,000/- per month. The Respondent (wife) also submits that earlier she was self-employed and conducting coaching classes. However, after her marriage on 21 April 2015, daughter `Vaibhavi' was born, hence it was not possible for the Respondent (wife) to continue with her coaching classes. It was further submitted that the daughter Vaibhavi was admitted in Pre-Primary School and hence there are expenses for her schooling. Therefore, it was pleaded that as the Respondent (wife) was not earning, for herself and for the daughter's expenses, a sum of Rs.25,000/- be granted as interim maintenance amount. So

also the costs towards the litigation expenses of Rs.25,000/- be granted.

4. After service of the copy of the interim maintenance application filed under Section 24 of the H.M. Act, the Petitioner (husband) did not file any say to the said application. Hence, “no say” order was passed against him. It is informed to the Court by the advocate appearing for the Respondent (wife) that the order of “no say” was not challenged by the Petitioner (husband).

5. After hearing the parties and on the basis of the documents which were on record, Civil Judge (Senior Division), Vasai by an order dated 15 June 2018 granted an amount of Rs.5,000/- per month towards maintenance to the Respondent (wife) and Rs.5,000/- per month towards the legal expenses from the date of filing of the Application.

6. Being aggrieved by the order passed by the Civil Judge (Senior Division), Vasai, the Petitioner (husband) filed Miscellaneous Civil Appeal before the District Court, Vasai.

7. The District Court, Vasai by its judgment and order dated 15 February 2022, partly allowed the said Miscellaneous Civil Appeal, by reducing the legal expenses to Rs.3,000/- per month instead of Rs.5,000/- per month, from the date of filing of the Application before the Trial Court. As far as the maintenance amount of Rs.5,000/- per

month was concerned, the same was not altered, and further Rs.5,000/- costs was imposed on the Petitioner (husband).

8. It was submitted before me that the Petitioner (husband) has complied with the first part of the order of maintenance of Rs.5,000/- per month and as of today, there is no outstanding pending. However, as regards to the payment of Rs.5,000/- per month towards legal expenses, the same has not been paid. It is the submission of the Petitioner (husband) that the order of payment of legal expenses per month can't be granted.

9. Mrs.Karkera, appearing on behalf of the Respondent (wife) made her submission.

10. Mrs.Karkera submitted that as of today, there is outstanding amount of Rs.12,000/- towards the maintenance amount and as far as the legal expenses are concerned, not a single rupee has been paid.

11. Mrs.Karkera further submitted that the application for maintenance under Section 24 was filed on 8 December 2016. At that time, the age of daughter `Vaibhavi' was one year and six months. Today the age of the daughter `Vaibhavi' is nine years and she is studying in Creative School in 3rd standard. Hence the amount of Rs.5,000/- per month on the count of maintenance granted is very less amount, and it is difficult for a single lady to maintain herself and to

bear the educational expenses of her daughter, who is studying in the 3rd standard. She therefore submitted that the present Writ Petition should be dismissed with exemplary cost, and the amount of maintenance should be increased.

12. I have heard both the counsel and gone through various documents on record. It is clear from the record that the application for maintenance was filed by the Respondent (wife) on 8 December 2016. On the date of filing of the interim maintenance application, the daughter was only one year and six months old. As of today, the age of the daughter is nine years and she is studying in a private school in the 3rd standard.

13. It has come on record that the Petitioner (husband) is owning three cars viz. (1) Wagon-R, (2) Hyundai i10 and (3) Innova. It is submitted by the Respondent (wife) that the interim maintenance application under Section 24 of the H.M. Act that the Petitioner (husband) earns Rs.75,000/- to Rs.80,000/- per month. The Petitioner (husband) has not denied the submission made by the Respondent (wife) in her application. Therefore, the order of “no say” was passed against the Petitioner (husband). Hence according to me, as it is not disputed, it is deemed admission on part of Petitioner (husband) that his income is Rs.75,000/- to Rs.80,000/- per month.

14. The Respondent (wife) also submitted in her interim

maintenance application that before the marriage, she was self-employed and was earning by conducting coaching classes. However, after her marriage she gave birth to daughter 'Vaibhavi' on 21 April 2015, hence it was not possible for her to conduct tuition classes and hence, her earning source stopped, as she was taking care of her minor daughter and she was managing the daily family chores. There is no denial by husband to this submission made by the Respondent (wife).

15. I am of the view that no ground is made by the Petitioner (husband) to show any perversity in the impugned order as far as maintenance amount is concerned. Therefore, challenge as far as to maintenance amount is concerned, the same stands confirm as there is no challenge to the maintenance amount. However, since the interim maintenance application was preferred only in the month of December 2016; seven years have passed thereafter. Taking into consideration the fact that the daughter is now in the third standard and due to passage of time, the inflation has gone up, I hereby grant liberty to the Respondent (wife) to file a fresh application for enhancement of maintenance amount for herself and for her daughter. If such an application for enhancement is preferred by the Respondent (wife), the said application be decided on its own merits.

16. As far as challenge to second part of the order passed by

the Civil Judge (Senior Division), Vasai of granting of Rs.5,000/- per month as legal expenses and further modification by reducing to Rs.3,000/- by the Sessions Court, Vasai, is concerned. It will suffice the purpose if the said amount of Rs,3,000/- per month is modified, as Rs.3,000/- per date of the hearing to be granted by Petitioner (husband) from 8 December 2016 till the disposal of H.M. Petition No.288 of 2016 which is pending before the Civil Judge (Senior Division), Vasai.

17. The arrears of the amount calculated per date of hearing towards legal expenses from December 2016 till date be paid by the Petitioner (husband) within a period of eight weeks from today.

18. The Writ Petition is accordingly disposed of with cost of Rs.25,000/- to be paid by Petitioner (husband) to Respondent (wife), within eight weeks from today.

(RAJESH S. PATIL, J.)