Ashwini V

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7193 OF 2022

Kishor Parshuram Dhumal …Petitioner
Versus
Anjali Kishor Dhumal …Respondent

Mr Ritvik Joshi, *i/b Gaurav Gangal with Ojas Gauri & Sujay Gangal, for the Petitioner.*
Mr Tejas Dande, *with Bharat Gadgavi & Chirag Deshpande, i/b Tejesh Dande & Associates, for the Respondent.*

CORAM: Neela Gokhale, J.
DATED: 2nd May 2023

PC:-

1. The Petitioner has assailed judgment and order dated 1st April 2022, passed by the learned Family Court Pune, on an application at Exhibit 42 in P.A. No. 481 of 2020, whereby the Petitioner husband was directed to produce verified copies of his previous and present passport, if renewed and the Income Tax Returns of his mother for the last three assessment years within eight days from the date of the order.

2. Proceedings arise from a petition for divorce being filed by the Petitioner husband against the Respondent wife under Section 13(1)(i-a) of the Hindi Marriage Act 1955 ("**the Act**"). The Respondent wife made an application under Section 24 of the Act seeking interim maintenance to the tune of Rs. 1,00,000/- per month for herself and Rs. 50,000/- for each of their two daughters. The Petitioner husband filed a reply rebutting the contentions of the Respondent wife. The wife contended that the Petitioner husband is a B.Com graduate, lives in a spacious bungalow. He owns three shops on the ground floor of the building and he runs his office from one of the shops. He has rented out the remaining two shops and receives rent of Rs. 20,000/- per month. On the first floor of the bungalow, there are five rooms where he resides with his mother. There are three other flats in the said building consisting of three rooms comprising of one room kitchen and the husband has also rented the said premises and earns Rs. 5,000/- per month from the same. She also states that the husband has two four wheeler cars and one bullet motorcycle. She has also enumerated in tabular form the details of the properties of her husband and the valuation of each property. She says that the daughters are aged 12 years and 2 years respectively. She thus states that her husband is wealthy and enjoys a high standard of living. She complains that he has not paid her any maintenance, for herself or for her minor daughters. She thus sought interim maintenance as prayed in the Section 24 application.

3. Per contra, the Petitioner husband denies all her contentions and says that he has no source of income and that he is residing in a house owned by his mother and that all the vehicles including the bullet motorcycle is also in the name of his mother. However, he concedes that after the death of his father, he has inherited one shop, which he has given on rent and he is earning some rental income. He has also admitted to inheriting some other properties from his deceased father. However, finally he seeks rejection of the application for interim maintenance.

4. Considering the reply of the Petitioner husband averring that some of the properties and the four wheeler etc., are in the name of his mother, the Respondent wife made an application below Exhibit 42 before the learned Family Court seeking production of documents *inter alia* including the previous and present passport of the Petitioner and the Income Tax Returns of last three years of the Petitioner's mother. The Petitioner husband contested this application. The learned Family Court by the impugned order allowed the same. It is this order which is the impugned order.

5. Mr. Ritivik Joshi learned Counsel holding for Mr. Gaurav Gangal the Advocate on record appears for the Petitioner husband. He states that the documents pertaining to his mother's income have no relevance in deciding the quantum of maintenance under Section 24 of the Act. He has also relied upon the criteria to be considered while deciding the application under Section 24 of the Act.

6. Per contra, Mr. Tejas Dande learned Counsel for the Respondent wife has vehemently contested the submissions of the Petitioner husband. He argued that the Petitioner husband is trying to avoid payment of maintenance to his wife and daughters by mischievously saying that all the properties and vehicles etc., are in the name of his mother and that he has no income of his own, save and except that which he has admitted in the reply to the Section 24 application. He relies upon the precedent of the Apex Court in the matter of *Rajnesh v Neha & Anr*[1] to say that even the Apex Court has acknowledged that both parties submit scanty material, do not disclose the correct income, expenditure and suppress vital information which makes it difficult for the Family Court to make an accurate assessment for the grant of interim maintenance. The Apex Court has further said that while there is a tendency on the part of the wife to exaggerate her requirement there is corresponding tendency by the Petitioner husband to conceal his actual income. The learned Counsel stresses upon this acknowledgement of the Apex Court to say that since the husband has insisted that all the properties are in the name of his mother, it has become necessary to call for the Income Tax Returns of the past three years pertaining to the Petitioner's mother. It is for this reason that the Respondent wife felt it necessary to make such an application and prayed for the documents as sought.

7. Having heard the Counsels of both the parties at length, it transpires that the averments in the Section 24 application contain specific details of the income of the Petitioner husband and also indicate the standard of living of the Petitioner husband. However, the reply to this application by the husband contains admissions by the husband that all these properties and vehicles are in the name of his mother and hence his own income is much less than that alleged by his wife.

8. Section 24 of the Act reads as thus:

1 (2012) 2 SCC 324

"24. **Maintenance pendente lite and expenses of proceedings.**

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioners own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

9. The object of the Section 24 of the Act is to basically ensure that both the parties are placed on a equal footing and that neither party is deprived of necessary means to bear the expenses of the litigation. The scheme of the provision is that the Court has to see that the Applicant has no independent income sufficient for her support and the necessary expenses of the proceedings. Thus, the documents of the Petitioner's mother as sought by the Respondent wife may be relevant for determination of permanent maintenance under the provision of Section 25 of the Act. However, the time of determining the quantum of interim maintenance under Section 24 the only criteria to be seen by the Court is income of the parties and their genuine requirement.

10. In these circumstances, the documents sought by the Respondent wife namely the Income Tax Returns of her mother-in-law for the past three years are not necessary for determination of quantum of maintenance under Section 24 of the Act. Needless to say that the Respondent wife is entitled to argue her case by relying upon the admissions in his reply to buttress the allegedly mischievous submission regarding ownership of properties.

11. In view of the forgoing, there is no reason to direct the Petitioner to furnish Income Tax Return of his mother. However, at the time of deciding the interim maintenance under Section 24 of the Act, the direction to furnish the present and renewed passport of the husband is confirmed.

12. Before parting, it is a disturbing fact to note that since separation of the parties and since filing of the petition for divorce in the learned Family Court Pune, till date. The Petitioner husband has not given any maintenance to the Respondent wife or his minor daughters. Needless to say that the application is pending before the Court and it will be decided on its own merit in due course of time. However, even litigation expenses have not been provided to the Respondent wife till date. Hence, it is only just and proper in the interest of justice and also in keeping with the spirit of the provisions of the Act that the Petitioner husband shall give an amount of Rs. 20,000/- to the Respondent wife towards litigation expenses. The said amount shall be transferred to her bank account directly within ten days from the date of this order. The Respondent wife is directed to give her bank account details to the Petitioner husband during the course of the day. It is made clear that this amount is only limited to the litigation expenses before this Court and the learned Family Court is free to award any further litigation expenses as it may in its discretion deem fit and proper.

13. The Writ Petition is disposed of in these terms. There will be no orders as to costs.

(Neela Gokhale, J)