

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4239 OF 2021

Arpit S/O Sunil Bhargava ... Petitioner

V/s.

Mahak W/O Arpit Bhargava ... Respondent

Mr. S.B. Shetye with Ms. Molina Thakr and Ms. Sarika Shetye and Mr. Akshay Pansare for the petitioner.

Mr. Saurabh P. Mehta with Mr. Rohit K. Gupta for the respondent.

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.02.18
10:27:00
+0530

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2023

P.C.:

1. The writ petition is filed by the husband challenging order dated 26th February 2022. By the impugned order, the petitioner is directed to pay interim maintenance of Rs.1 lakh which according to paragraph 46 of the order is towards house rent and Rs.1,40,000/- per month which according to order includes yearly fees of Rs.80,000/-.

2. According to the petitioner, following are the basic flaws in the order: first, the decision of the Apex Court in **Rajnesh v. Neha** reported in 2021 (2) SCC 324 has not been followed inasmuch as in spite of application of husband the affidavits as contemplated by annexures of the judgment were not directed to be filed by the Family Court. Second, though wife is residing with her parents, amount of Rs.1 lakh has been directed to be paid on

monthly basis from the date of application. It is undisputed that from 2018 till today the wife has not shifted to rented house; and third, the husband is directed to pay interim maintenance of Rs.1,40,000/- per month which according to the learned advocate includes amount of Rs.80,000/- towards school expenses when such liability of school fees accrues on yearly basis.

3. According to the learned advocate for the respondent, since husband failed to pay arrears of amount, the wife has not shifted to the rented house. According to him, the initial affidavit filed by the husband was not containing three (3) landed properties which amounts to suppression of material facts. According to him, the documents on record produced before the Family Court disclose that the applicant is leading to luxurious lifestyle. According to him, therefore, the wife is entitled to lead same lifestyle as she was accustomed during her relationship with the husband.

4. After considering the submissions made on behalf of both sides, I am of the opinion that the decision-making process by the Principal Judge, Family Court is flawed. First and foremost, the Family Court ought to have directed parties to file their affidavit of assets and liabilities as contemplated by the judgment of the Apex Court in **Rajnish** (supra). Such material flaw in the adjudication cannot be substituted before this Court by granting opportunity to the wife to file documents produced before the Family Court. The Family Court being the Trial Court is expected to adjudicate prima facie all the relevant factors for grant of interim maintenance as laid down by the Apex Court in the case of **Rajnish** (supra).

5. Though the learned Judge has referred to the said judgment, while recording finding of petitioner's income of Rs.5 lakh per month, there is no relevant discussion as to how the said figure was arrived at.
6. According to wife, she is earning Rs.1 lakh. The income of the parties needs to be adjudicated based on affidavits filed by the parties regarding assets and liabilities and other material produced by the parties. In absence of discussion of such relevant material, the findings of income recorded by the Family Court, namely, that the husband's income is Rs.5 lakh and wife's income is not more than Rs.1 lakh suffers from finding based on extraneous consideration.
7. The glaring aspect of non-application of mind is school expenses as referred in paragraph 40 clause 4 of the order. The school expenses undisputedly accrues on yearly basis. However, the Family Court directed husband to pay such expenses on monthly basis. All these factors show that the Family Court has ignored material aspects of the matter or has taken into consideration factors which are not germane for deciding rights between the parties.
8. Undisputedly, the petitioner has paid an amount of Rs.20 lakh as per order of this Court dated 17th August 2021.
9. According to wife, she has lost her job. The said factor, if proved to the satisfaction of the Family Court, would be a material circumstance to consider application for maintenance filed by the wife.

10. In view of aforesaid reasons, in my opinion, fresh adjudication on relevant factors needs to be done by the Family Court.

11. For the reasons stated above, the impugned order dated 26th February 2021 passed by the learned Principal Judge, Family Court, Mumbai on application below Exhibit 6 is quashed and set aside.

12. The Principal Judge, Family Court, Mumbai shall decide application below Exhibit 6 afresh after permitting both parties to file affidavits as contemplated by the judgment of the Apex Court in **Rajnesh** (supra). It will be open for the wife to place additional material on record to show that she has lost her job. The husband would be at liberty to contest the same by producing relevant material.

13. The Family Court after taking overall view of the matter shall pass appropriate order in accordance with law and after considering the parameters laid down by the judgment of the Apex Court in **Rajnesh** (supra).

14. Till the application for interim maintenance filed by the wife is decided, the petitioner shall continue to pay Rs.50,000/- per month towards maintenance of the child, and in case in the meantime liability to pay school expenses arise, such liability shall also be paid by the husband.

15. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)