

Ghugre

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

WRIT PETITION NO. 10885 OF 2022

Hemant Ashok Mohite	... Petitioner
V/s.	
Sandhya Hemant Mohite	... Respondent

Mr. Vivek V. Salunke for the petitioner.

Mr. Abhijit Adagule and Kush M. Lahankar for
respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 6, 2023

P.C.:

1. This petition is directed against the order dated 2nd June, 2022 passed by the learned Family Court No.5, Pune below Exhibit 10 in P.A. No.845 of 2020 directing the husband to pay interim maintenance of amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the wife till the final disposal of the petition.
2. The marriage between the petitioner and the respondent solemnized on 30th November, 2018. Out of the said wedlock, the petitioner and respondent has a son born on 26th August, 2016. The parties are residing separately since 7th April, 2019.
3. On 7th October, 2020 the petitioner filed Hindu Marriage Petition bearing No. P.A. 845 of 2020 for divorce. In the said petition, the respondent/wife filed an application under Section 24 of the Hindu Marriage Act, 1955 claiming maintenance of Rs.50,000/- (Rupees Fifty Thousand Only) for herself and her son.

4. The petitioner contested the said application giving details of expenses incurred by him and stated that the wife is earning amount of Rs.1,00,000/- (Rupees One Lakh Only) and the petitioner is getting salary of Rs.70,000/- (Rupees Seventy Thousand Only) per month.

5. Learned Judge, Family Court No.5, Pune by the impugned order though directed husband to pay interim of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the wife. Clause 3 of the said order clarifies the said direction stating that out of the Rs.25,000/- (Rupees Twenty Five Thousand Only) directed to be paid to the wife, housing loan EMI of Rs. 15,700/- (Rupees Fifteen Thousand Seven Hundred Only) shall be paid towards loan as regards the flat taken by the petitioner and respondent jointly. Remaining amount of maintenance is to be used for educational expenses of her son, with the result the wife has not been granted any maintenance.

6. Learned advocate for the petitioner made three submissions.

a) Family Court has not considered the liabilities of the petitioner, and mainly amount of Rs.10,000/- (Ten Thousand Only) to be incurred towards medical expenses of his mother.

b) Payment of EMI of Rs.17,500/- (Seventeen Thousand Five Hundred Only) required to be paid towards flat jointly owned by the petitioner and the respondent.

c) Since the respondent is earning, she is not entitled to maintenance.

d) It is submitted that, under Section 24 of the Hindu Marriage Act, 1955, the order of residence cannot be passed by the Court. The impugned order is in substance of order granting residence to the wife.

7. Insofar as the First and Second contention is concerned, it is undisputed fact that the petitioner is earning amount of Rs.75,000/- (Rupees Seventy Five Thousand Only) as a gross salary. The impugned order has clarified in clause 3 directing wife to pay amount of Rs.15,700/- (Fifteen Thousand Seven Hundred Only) towards EMI and remaining amount for educational expenses of the son, with the result wife is not entitled to any maintenance. If this is so, taking into consideration gross salary of Rs. 75,000/-, amount of Rs.25,000/- granted towards payment of EMI and educational expenses itself cannot be considered as unreasonable. The non- consideration of factors in paragraph 5 does not cause any prejudice to the petitioner as no amount of maintenance has been granted to the wife.

8. Insofar as the contentions that under Section 24 of the Hindu Marriage Act, 1955 order could not have been passed is concerned, in my opinion, the Court directed the husband to pay EMI towards the joint property owned by the husband and wife. In my opinion, direction to pay EMI of Rs.15,700/- would be permissible under Section 24 of the Hindu Marriage Act, 1955 as such amount would be asset the petitioner and the wife ultimately when the loan is paid.

9. Insofar the contentions regarding non-entitlement of the wife

to get income as she is earning is concerned, the Apex Court in **Rajnish V. Neha** reported in (2021) 2 SCC 324 has considered this aspect and held that the wife having independent means of earning by itself is not sufficient factor to deny her maintenance. In the facts of the case, since no amount is directed to be paid to the wife, in my opinion, the order of direction to pay Rs.15,700/- (Rupees Fifteen Thousand Seven Hundred Only) towards EMI and rest of the amount for educational expenses cannot be faulted. There is no perversity nor miscarriage of justice.

10. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)