

Ashwini V

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11482 OF 2022**

Rajesh Narsi Jethva	...Petitioner
<i>Versus</i>	
Priya Rajesh Jethva	...Respondent

Ms Swati Parag Gautam, for the Petitioner.
None for the Respondent.

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

PC:-

1. Ms. Swati Gautam learned Counsel appears for the Petitioner husband. None appears for the Respondent.

2. By order dated 16th December 2022, this Court had given a last chance to the Respondent to conduct the matter. However, even today, the Respondent has failed to appear.

3. The Petitioner husband has assailed order dated 1st March 2021, passed by the learned Family Court Bandra, Mumbai whereby he was directed to pay an amount of Rs. 30,000/- per month to his wife towards interim maintenance from the date of application. The husband was also directed to pay Rs. 15,000/- per month to his son

till he completes graduation in B.Tech. Additionally the husband was directed to pay the actual education expenses of the son till he completes his degree. The Petitioner has also assailed order dated 27th July 2022, passed by the learned Family Court Bandra, Mumbai, in Review Application below Exhibit 44. This application was made by the Petitioner seeking review of the original order dated 1st March 2021, in respect of grant of interim maintenance.

4. The facts giving rise to the present petition are that the Petitioner husband had filed a petition for divorce against his wife under Section 13(1)(i-a) of the Hindu Marriage Act 1955 (“**the Act**”) for dissolution of marriage. The Respondent wife filed application seeking interim maintenance under Section 24 of the Act. The pleadings are said to be completed in the matter before learned Family Court.

5. The Petitioner husband has contested the application for interim maintenance by filing his reply. The learned Family Court after hearing both the parties had drawn adverse inference against the Petitioner husband as he has shown himself as self-employed in the array of parties in the cause title. The learned Family Court has also relied upon the Affidavit of Income and Expenditure filed by the Respondent wife. After considering the balance sheet and the Income Tax Returns and other documents relating to his income, as well as the documents of the Respondent wife, the learned Family Court arrived at the quantum of interim maintenance as directed.

6. Ms. Swati Gautam learned Counsel for the Petitioner brought to my attention the fact that the son Aaryan was major even at the time of passing of the impugned order. However, the learned Family Court has erroneously observed that neither the party has provided the date of birth of the child. The learned Counsel has further pointed out that the pleadings in the petition as well as the written statement indicate that even on the date of deciding the application for interim maintenance, the son was major and that he was undergoing the B.Tech course. The Counsel for the Petitioner husband submits that as on date the son Aaryan has completed his B.Tech course and hence the direction to pay interim maintenance to him needs to be modified.

7. Section 24 and 26 of the Act read thus:

“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.

26. Custody of children.

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”

8. From the bare reading of the provisions it is quite clear that the wordings of the provision of Section 26 itself indicates that said provision is to provide maintenance to minor children. It is an admitted position that son Aaryan is adult and has now completed his B.Tech course. He is thus no longer dependent on his father and hence the directions at clauses (c) and (d) of the impugned order need to be modified.

9. The impugned order is thus modified to the extent that the Petitioner husband shall continue to pay interim maintenance to the Respondent wife as directed by the learned Family Court Bandra, Mumbai. The Petitioner husband is directed to continue to pay an actual education expenses in respect of son Aaryan subject to receipts of the expenditure being provided to the husband. However, the relief in clause (c) is quashed and set aside.

10. The Writ Petition is disposed of accordingly. There shall be no orders as to costs.

(Neela Gokhale, J)