



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO. 3720 OF 2023

SACHIN SHIVAJ VARPE
VERSUS
PRANJAL SACHIN VARPE UNDER GUARDIAN OF MOTHER VARSHA
SACHIN VARPE AND OTHERS

Mr. A. B. Hawale, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 18th DECEMBER, 2024

PER COURT :-

1. A short question arises for consideration of this Court is as to whether the application filed by respondent for maintenance in suppression of fact of payment of maintenance awarded in previously instituted proceeding is maintainable.

2. Respondent 2 is wife of the petitioner. She filed an application Exhibit 22 in R.C.S. No. 62/2021 for seeking interim maintenance for herself and her minor daughter. In the said application it is claimed that the defendants therein cultivate the land and earn income around Rs.10 lakhs per annum and hence, interim maintenance of Rs.10,000/- is asked for meeting the expenses of the education of the daughter.

3. Petitioner/defendant filed say to the said application raising

objection to the maintainability to the application on the ground that such application is not tenable before the Court in suit for partition. It is also contended that the applicants were getting maintenance of Rs.9500/- per month from the petitioner/original defendant no.1 and application for enhancement of the said compensation is pending before the JMFC, Panvel.

4. Learned Trial Court allowed application granting maintenance of Rs.1000/- each to the applicants.

5. Learned counsel for the petitioner submits that respondent no.2 has suppressed the fact of maintenance being awarded to her in previously instituted proceeding. He submits that judgment of Hon'ble Supreme Court in case of *Rajnish Versus Neha and Another, (2021) S SCC 324* have issued direction that if maintenance is awarded to the wife previously instituted proceeding, she is under legal obligation to disclose the same in a subsequent proceeding for maintenance which may be filed under another enactment. It is submitted that the Trial Court has ignored the said legal position and granted maintenance.

6. Learned counsel for the contesting respondents submits that in any event since the Trial Court has considered the factum of the previously granted maintenance while issuing direction, this is not the

case for causing interference in the impugned order.

7. There is no dispute about the fact that the contesting respondent filed application for maintenance while M.C.A. No. 1280/2014. The J.M.F.C., Panvel allowed the said application and directed maintenance of Rs.5000/- and Rs. 2000/- each to the wife and daughter, In Criminal Appeal Nos. 40/2016 and 43/2016 the said amount of maintenance came to be enhanced from to be Rs. 7000/- to Rs. 9500/-. The wife filed suit through her daughter for partition being R.C.S. No. 62/2021. In this suit application Exhibit 22 was moved for seeking maintenance. Admittedly, in the said application it was not pointed out by her about the grant of maintenance in the proceeding under the Protection of Women From Domestic Violence Act.

8. Perusal of the impugned order shows that even during the course of the argument it was not case of contesting respondent that the amount of maintenance needs to be adjusted in view of the earlier order passed in their favour. Paragraph no. 19 of the impugned order clearly demonstrates that it was learned counsel for the defendant/ petitioner herein who had brought to the notice of the Trial Court about such previous orders of maintenance being passed. It is thus clear that at all stages of the said application, there is suppression of material fact by the contesting respondent with regard to the grant of maintenance in earlier

proceeding.

9. Hon'ble Supreme Court in case of *Rajnesh Versus Neha and Another* (cited supra) has made a legal obligation for the wife to disclose the maintenance awarded in previously instituted proceeding, in a subsequent proceeding for maintenance under another enactment. The application, therefore, is in contravention of the directions issued by the Hon'ble Supreme Court and in suppression of material facts. It is settled law that when the party which approaches to the Court with unclean hands and suppresses material facts, is not entitled to get any relief. Merely because applicant is a lady, no exception can be done to the rule.

8. Having regard to these facts, without going in to the merit of the impugned order, petition deserves to be allowed. Hence, impugned order is set aside. It is, however, clarified that the present order would not come in way of the wife and daughter to seek relief of maintenance as provided by law.

(R. M. JOSHI, J.)

ssp