



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2411 OF 2023
WITH WP/1303/2023 WITH CA/3417/2024
IN WP/2411/2023 WITH CA/3416/2024
IN WP/1303/2023

Shweta W/o Shrikrushna Upakare Nee
Shweta D/o Sudhakar Ghan & Anr

...Petitioners

Versus

Shrikrushna S/o Ramakant Upakare

...Respondent

Mr. Kshitij Surve, Advocate for the Petitioner in
WP/2411/2023 & for Respondent in WP/1303/2023
Mr. R. G. Joshi, Advocate for Respondent in
WP/2411/2023 & for Petitioner in WP/1303/2023

CORAM : R.M. JOSHI, J.

DATE : JUNE 11, 2024

PER COURT:

1. Heard finally at stage of admission by consent
of both sides.

2. At the outset, learned Counsel for the
Petitioners in WP/2411/2023 makes statement that the
Petitioners does not wish to press present Petition *qua*
Petitioner No. 1 at this stage. He however has serious
reservations about the impugned order dated 03.09.2022
passed by the Family Court in Petition No. C-08/2017

whereby the application for maintenance of the minor child is postponed. It is his submission that having regard to the nature of relief sought by way of interim maintenance application, it was obligatory on the part of the Court to decide the said application expeditiously. It is his contention that the postponement of hearing of interim maintenance application along with main Petition is not justifiable.

3. Learned Counsel for the Respondent submitted that the Petitioner No. 1 is employed and therefore, would not be entitled for any maintenance. He further makes statement that without their being any order of any Court, Respondent/Husband is depositing a sum of Rs. 5000/- in the bank account of wife and Rs. 3000/- towards maintenance of the child. It is his grievance that though Respondent is ready to bear the expenses of the schooling of the child, the Petitioner No. 1, mother of the child, is not cooperating with the Respondent in this regard. It is his submission that on account of non-cooperation by the Petitioner No. 1, application for maintenance could not be taken up for

hearing.

4. Record indicates that Petitioner No. 1 and Respondent were married on 10.02.2008. A daughter was begotten from the said wedlock on 13.12.2010. The allegations indicate that after seven years of cohabitation, there was turbulence in the marital life and that the parties are staying separately. Petitioners filed application for maintenance and Petitioner No. 1 has also filed affidavit indicating that she has no source of income.

5. At this stage, it would be relevant to take note of the observations made by the learned Family Court in the impugned order. The said order indicates that number of applications were filed by both sides and practically it is made not possible for the learned Judge to take up hearing in view of parties to the dispute making one or the other application on every date of hearing. Thus, the Court is prevented from taking up main proceeding as well as the maintenance applications of wife and daughter. Due consideration of the record and submissions made across the bar by the Counsels for both sides indicate that Petitioner No. 1

and Respondent are creating hurdles in the proceedings before the Family Court. After at all both parents ought to have been interested in the welfare of the child and are expected to cooperate with the Court for early hearing of the maintenance application of minor daughter which is not so appearing from the record.

6. There is no dispute about the fact that without their being any judicial order, Respondent is paying total sum of Rs. 8,000/- to Petitioner No. 1 for herself and minor daughter. Thus, this not the case that the Respondent has totally neglecting the child. Record *prima facie* indicates that the Respondent is not even being provided with the details of the school and expenses of the child even though he wishes to meet the same.

7. All the aforestated circumstances depicts that the observations made by the learned Family Court in the impugned order are not exaggeration. It seems that learned Judge was compelled to record such observations considering the conduct of the parties before it. In peculiar facts and circumstances of the case, if the trial Court finds that the applications are required to

be heard together, no perversity can be said to have been caused in such order.

8. This Court, therefore, does not wish to cause any interference in the impugned order. However, learned Judge of the Family Court is requested to decide the said proceeding of Petition No. C-08/2017 expeditiously. Both Petitions stand disposed of. Pending civil applications are also disposed of.

(R. M. JOSHI, J.)

Malani