



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7758 OF 2023

Vaibhav s/o Subhash Gaikwad
Age : 35 years, Occu.: Business,
R/o. Gurukrupa Niwas, Indira Nagar,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

... PETITIONER
(Ori. Petitioner)

Versus

Priyanka w/o Vaibhav Gaikwad
Age : 35 years, Occu. Household,
R/o-C/o. Vilas Jagannath Kudale,
Devkarvasti, Sarswati Colony, Ward No. 6,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

... RESPONDENT
(Ori. Respondent)

Mr. A. S. Gandhi, Advocate for the petitioner
Mr. R. B. Bagul, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 12th JUNE, 2024

PER COURT :-

1. This petition takes exception to the order dated 9th January, 2023 passed below Exhibit 22 in Hindu Marriage Petition No. 204 of 2021 directing payment of maintenance of Rs.10,000/- to the respondent-wife and Rs.2,000/- towards litigation expenses.

2. It is the case of the petitioner-husband that the marriage of the petitioner with respondent-wife was solemnized on 12th May, 2013 at Shrirampur and out of the said wedlock a girl child is born on 31st July, 2014. It is alleged by the husband that after marriage wife always used

to call her parents and brother and used to spent much time in talking with them. It is also stated that due the excessive influence of her relatives the wife did not behave properly at her matrimonial home. However, having regard to the welfare of child the petitioner tolerated such behavior. It is alleged that the wife refused to cohabit with the petitioner and deserted him. The petitioner, therefore, filed H.M.P. No. 204 of 2021 before the Civil Judge, Senior Division, Shrirampur under Section 13(1)(ia) of Hindu Marriage Act. Respondent-wife appeared in the said proceedings and apart from filing reply moved an application under Section 24 of the Act for seeking interim maintenance of Rs.20,000/-. Both sides filed affidavits disclosing their assets and liabilities. It is the case of the petitioner that respondent herself deserted the petitioner and as such she is not entitled to claim maintain. It is also claimed that the respondent wife is highly qualified and she is not dependent on anyone and hence she does not have any right to seek maintenance from the petitioner. Petitioner claims that though his income is Rs.5 lakhs per annum, however, he has responsibilities and expenses including payment of premium for the medical policies and insurance policies taken in the name of himself, wife and daughter. He also claimed to have obtained loan from various banks for business and is required to pay EMI. It is also claimed that on account of Covid-19 pandemic situation he has suffered losses in the business and unable to pay the installments. According to petitioner, all these facts were ignored

by the learned Trial Court has directed payment of maintenance at the rate of Rs.10,000/- per month.

3. Learned counsel for the petitioner-husband submits that it was incumbent on the part of the learned Trial Court to take into account the fact that monthly installments are required to be paid by the husband towards repayment of loan as well as payment of premium of insurance policies. It is his submission that the wife is highly educated and relying upon the judgment of the Delhi High Court in case of *Chetram Mali Vs. Karishma Saini in MAT. APP. (F.C.) 196/2023, CM. Appeal Nos. 34480 and 34482 of 2023*, it is submitted that she is not entitled to claim any maintenance.

4. Learned counsel for the respondent-wife opposed the said submissions and supported the impugned order. According to him, on the basis of the affidavits filed on record and the documentary evidence the learned Trial Court has directed grant of maintenance of Rs.10,000/- which is not exorbitant.

5. Parties are Hindus. Section 18 of the Hindu Adoptions and Maintenance Act cast statutory liability on the husband to maintain his wife during subsistence of the marriage. The present case is not covered by the exceptions carved out therein. It is not in dispute that petitioner-husband has business. As far as the earning capacity of the petitioner is concerned, there is *prima facie* evidence to indicate the same. It is

sought to be claimed by the petitioner that he had obtained loan for the business purpose and he is unable to repay the monthly installments, but the same cannot become a ground for denial of maintenance to the wife. It is pertinent to note that if the petitioner obtains loan to the tune of Rs.50 lakhs that fact itself indicates volume of business of the petitioner. So far as payment of premium on the insurance and other policies would not become on a ground for denying or reducing maintenance payable to the wife. There is nothing on record that wife is employed and is able to maintain herself. Merely because wife is qualified, it cannot be presumed that she would certainly get employment. There is nothing on record to indicate that no attempts were made by the wife to secure any employment. It is a matter of common knowledge that there is serious issue of unemployment in the country and even highly qualified persons struggle to secure decent job. At this stage, this Court, therefore, is not able to accept the contentions of the learned counsel for the petitioner that merely because wife is highly qualified she is not entitled to seek maintenance, relying upon judgment of Delhi High Court cited supra.

6. Having regard to the facts and circumstances of the case and *prima facie* material on record, this Court finds no perversity in the impugned order or granting maintenance to the wife. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp