



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13360 OF 2024

Neeraj Mohan Agrawal

VERSUS

Pooja Niraj Agrawal

...

Mr. Hemant Surve, Advocate for the Petitioner

Mr. B. N. Gadegaonkar, Advocate for Respondent

CORAM : R.M. JOSHI, J

DATE : DECEMBER 11, 2024

PER COURT :

1. This Petition takes exception to the order of interim maintenance granted by the learned Family Court, Nanded under Section 24 of the Hindu Marriage Act (for short 'the Act') in Petition bearing No. A-35/2019.

2. Petitioner is husband who has filed Petition bearing No. A-35/2019 seeking divorce from the Respondent/Wife. During the pendency of the said Petition, an application Exh. 29 came to be filed by Respondent/Wife under Section 29 of the Act for maintenance pendente lite.

3. There is no dispute about the fact that the Petitioner and the Respondent are legally wedded wife

and husband. A daughter is begotten from the said wedlock. The wife had filed proceedings under the Domestic Violence Act wherein she is receiving a sum of Rs. 3,000/- for her maintenance and so also Rs. 1,000/- for maintaining her daughter. After this application is filed, as contemplated by the order of the Hon'ble Supreme Court *Rajnesh Vs. Neha and Anr, AIR 2021 SC 569*, affidavit of assets and liability were filed by both sides. Learned Family Court, after considering the submissions made on behalf of both sides and after considering the material placed on record, passed impugned order whereby it was directed to the Petitioner/Husband to pay sum of Rs. 8,000/- per month to the Respondent/Wife and Rs. 5,000/- per month to the daughter as maintenance pendente lite.

4. Learned Counsel for the Petitioner makes grievance with regard to the order impugned on the ground that there is suppression of material facts by the Respondent/Wife in her affidavit of disclosure of assets and liability. According to him, there is evidence on record to indicate that the Respondent/Wife is qualified Revised Aux. Nurse Midwifery (F.H.W.) and

said fact has been suppressed by claiming that she is 10th standard pass only. According to him, once such qualification is acquired by her, she cannot remain idle and claim maintenance. It is his further submission that the learned Family Court has committed serious error in applying the dual standards for appreciating the case of the husband and wife. It is his submission that when it comes to the wife, it is observed that there is no evidence placed on record to indicate that wife is working and hence, the contention of the husband is rejected. As against this, even though there is no evidence on record to indicate the income of the husband, income of the husband on speculation is held to be Rs. 30,000/- to 40,000/- per month. It is argued that Family Court wrongly recorded findings in respect of business of the Petitioner as computer repairer. It is his further submission that there is no justification for the learned Family court to record finding merely because the Petitioner/Husband is having ancestral agricultural land as well as premises on the assumption that income must be derived therefrom. It is also argued that when the business of kerosene is already come to an halt in view of the

Government Policy since 2019, question of Petitioner earning any income from the same does not arise. It is his further submission that the learned Family Court has committed error in not considering/adjusting the amount of maintenance granted in the Domestic Violence proceedings. It is his further submission that the learned Family Court has also not taken into consideration the judgment of the Hon'ble Supreme Court in case of Rajnes (supra). On these amongst other submissions, impugned order is sought to be set aside.

5. Learned Counsel for Respondent supported the impugned order.

6. At the outset, it needs to be recorded that the order impugned is interim maintenance and hence, rights of the parties are not determined finally by the Family Court. Since this is a Writ Petition, this Court, while exercising writ jurisdiction, needs to consider as to whether the findings recorded by the learned Family Court are perverse or wholly unsustainable in order to cause interference therein, more particularly when order impugned aims at maintaining wife and minor daughter of Petitioner.

7. Record indicates that it is not a specific case of the Petitioner/Husband that his wife is working somewhere and earning. What has been sought to be argued is that the wife is qualified as Revised Aux. Nurse Midwifery (F.H.W.) and, therefore, she cannot sit idle. As against this, there is admission on the part of the husband that he is doing work of computer repair. Further, there is no dispute about the fact that he holds license as a kerosene dealer. Similarly, he does not dispute that he owns an agricultural land as well as immovable properties. It is pertinent to note that though husband has admitted all these facts, he does not specifically claim as to the amount of income which he received from his business as computer repairer or kerosene dealer or agricultural land. There is also no specific statement made before the learned Family court that though he owns the land, the said land is not cultivated and that he is not earning any income therefrom. What was sought to be canvassed before learned Family court that he has no concern with the said land. The observations made by the learned Family Court needs to be considered in the light of the

case sought to be made out by both sides.

8. When there is admitted fact that the Petitioner/Husband is working and when he fails/refuses to place on record, even *prima facie* evidence about his income, it is open for the learned Family court to record findings by applying some speculations. Since it is not possible at this stage to decide with precise mathematical calculations the income of husband, it is impermissible for the Court to consider our all circumstances and determine amount tentatively. The contentions of the learned Counsel for the Petitioner that said speculation in the present case is excessive, is not acceptable at this stage for the reason that on the basis of admitted facts, the Petitioner/Husband is not only having business of computer repairer but he is having dealership in his name, so also he has other properties including agriculture property. Having regard to these facts, this Court is unable to accept the contention of the learned Counsel for the Petitioner that speculative work done for arriving at the income of the Petitioner/Husband is not proper.

9. It is pertinent to note that the learned

Family Court has taken into consideration the order passed in PWDVA No. 59/2018 and thereafter the amount of interim maintenance for wife as well as daughter is determined. Petition for divorce is filed by husband under the provisions of Hindu Marriage Act, there cannot be dispute about the fact that parties herein are Hindus. The provisions of The Hindu Adoptions And Maintenance Act, 1956 (for short '**the Act**'), therefore, apply to them. Section 18 of the said Act provides that Hindu wife shall be entitled to be maintained by husband. The only exception to such claim is carved out in sub-section 3 thereof. Admittedly, present case is not covered by the said exception. Hence, it is obligation of the Petitioner to maintain his wife. Similarly, Section 20 of the said Act mandates maintenance of minor child by Hindu male. Thus, having regard to these statutory provisions and having considered *prima facie* pleadings of the parties and material placed on record, there is no justification to cause interference in the impugned order.

10. In any case, since this is interim order and the rights of the parties are not determined finally,

it would be open for the Petitioner to substantiate his contention before the learned Family Court during the hearing of the Petition on merit finally. Needless to say that it would be necessary for the learned Family Court to take into consideration such case made out by Petitioner, if any and to adjust the amount of maintenance, if ultimately it is found that order of maintenance pendente lite was excessive. Hence, no prejudice will cause to the Petitioner/Husband if order impugned is not interfered with.

11. Learned Family Court to expedite the proceedings, if parties make such request.

12. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)