



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

915 CRIMINAL WRIT PETITION NO. 1988 OF 2024

**BABU RATAN DABADE
VERSUS
VAISHALI W/O BABU DABADE
@ VAISHALI D/O SHRAVAN JADHAV**

.....
Advocate for the Petitioner : Mr. Amit Arunkumar Mukhedkar
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**CORAM : Y.G. KHOBRADE, J.
DATE : 13.12.2024**

PC.:-

1. Heard advocate Mr. Mukhedkar the learned counsel appearing for the Petitioner at length.
2. By the present petition, the Petitioner/Husband takes exception to the order dated 15.10.2024 passed below Exh.5 in Petition E-46/2020 by the learned Family Court, Nanded, whereby the learned Family Court granted interim maintenance @ Rs.10,000/- per month in favour of the Respondent/Wife.
3. On face of record, it appears that, the Respondent/Wife filed a Petition E-46/2020 before the learned Family Court, Nanded, alleging that on 21.05.2006, her marriage was solemnized with the present Petitioner at

Nanded. The present Petitioner her husband is a Teacher by profession. After the marriage she cohabited with her husband (Petitioner). However, due to allegations of domestic violence against her she was compelled to reside separately.

4. It further appears that the Respondent/Wife also filed PWDV No.41/2019 under Section 12 of the DV Act on ground that after the marriage she co-habited with her husband-Petitioner, however, she was subjected to domestic violence as she was physically assaulted and illegal demand for dowry was also raised. The Respondent-Wife further pleaded that she had filed a proceeding bearing no.212/2010 under the provisions of Hindu Marriage Act and during the pendency of said proceeding, the present Petitioner had agreed to pay one time maintenance amount of Rs. 5,00,000/- (Rupees Five Lakhs). Therefore, a entitlement deed was executed. Accordingly, on 31.03.2011 said proceeding came to be disposed off. However, the present Petitioner/Husband did not comply with the terms and conditions of the Settlement deed but he only co-habited with her only for 2½ months and left her company. Since then she is residing at the mercy of her husband.

5. On 15.10.2024, the learned Family Court passed an order below Exh.5 in Petition E- No.46/2020 holding that the relationship between the

Petitioner/husband and Respondent/wife is still in existence. The Petitioner/Husband is a Teacher and drawing salary of Rs.1,00,949/- but after deduction he draws gross salary of Rs.76,533/-. The Petitioner is paying loan installments of Rs.45,000/- toward housing loan. The Petitioner/Husband is having assets to the tune of Rs.33,10,000/-. Therefore, considering the status of the present Petitioner, the learned Family Court, Nanded granted Rs.10,000/- per month towards monthly interim maintenance after taking into consideration the interim maintenance granted of Rs.5,000/- in DV proceeding no.41/2019.

6. In the case of ***Kalyan Dey Chowdhury V/s. Rita Dey Chowdhury Nee Nandy; (2017) 14 SC 200***, the Hon'ble Supreme Court observed in para 14 and 15 as under:

“ 14. Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25 (2), the court would have regard to the “change in the circumstances of the parties”. There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just.

15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent-wife pursuant to the liberty granted by this Court when the earlier order dated 02.02.2015 awarding a maintenance of Rs.16,000/- to

the respondent-wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant-husband was getting a net salary of Rs.63,842/- after deduction of Rs.24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February, 2016, the net salary of the appellant is stated to be Rs.95,527/- . Following Dr. Kulbhushan Kumar vs. Raj Kumari and Anr., in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was Rs. 95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent-wife and son.”

7. Needless to say that as per the ratio laid down in the case of **Dr. Kulbhusahan Kumar Vs. Raj Kumari and Anr., (1970) 3 SCC 129**, it is held that the wife is entitled for maintenance of 25% of her husband's net salary. In the case in hand, the Petitioner/Husband is drawing gross salary of Rs.1,00,949/- but he availed the loan facility and paying installments of Rs.45,000/- which cannot be considered while determining the interim maintenance or the permanent alimony. Needless to say that grant of interim maintenance of Rs.10,000/- under the order impugned order dated 15.10.2024 passed below Exh.5 in Petition E-46/2020 and interim maintenance of Rs. 5,000/- in DV proceeding no.41/2019, which comes to Rs.15,000/- towards, which does not cross limit of 25%. Therefore, I do not

find that, the Petitioner has set out any substantial grounds even to issue notice to the Respondent. Resultantly, present Petition is hereby dismissed.

[Y.G. KHOBRAGADE, J.]