



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

**CIVIL APPLICATION NO. 3786 OF 2024
IN FCA/95/2022**

**RAJRATAN JITENDRA WAGHMARE
VERSUS
CHITRA W/O RAJRATAN WAGHMARE**

...

Advocate for Applicant : Mr. Hemant Surve
Advocate for Respondent : Ms. Mayuri Kasturkar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 11 JULY 2024

PER COURT :

1. This is an application by the husband who has preferred the Family Court Appeal against the decree for divorce passed by the Family Court on a petition filed by the respondent/wife.

2. By way of this application, the husband is praying for staying operation of the impugned judgment and order to the extent directing him to pay Rs.7500/- per month to minor children of the couple, from the date of petition i.e. 27.11.2018 and further seeking stay to the execution proceeding preferred by her for the selfsame purpose. Alternatively, it is being prayed that the petition itself be remanded back.

3. Learned advocate for the applicant submits that though an application was submitted at Exhibit-20 before the trial Court

claiming alimony *pendente lite* under Section 24 of the Hindu Marriage Act and Section 26 of the Protection of Women from Domestic Violence Act, 2005 it was directed to be considered and decided at the time of decision of the petition. Though the petition was decided, no specific issue was framed regarding maintenance, still, the Court had proceeded to decide the maintenance. The applicant/husband could not get the opportunity rather the decision has come like a bolt from the blue. He would submit that the respondent/wife is also a Government Servant and has been maintaining the children. She is also getting the medical bills reimbursed. Since the maintenance that was being claimed, was a maintenance *pendente lite*, its efficacy would end with the termination of lease and the learned Judge of the Family Court could not have fixed any maintenance/alimony in the final order. He would place reliance on the decision of a Single Judge dated 12.12.2003 in the matter of Ramavtar Vs. Smt. Chintamani in C.R. No.491/2003.

4. Per contra, the learned advocate for the respondent/wife would submit that even the husband is in the Government Service. It is specifically observed by the learned Judge in the impugned judgment and order, indicating as to how with the consent of both the sides, the issue regarding maintenance was being adjudicated with the petition itself. The learned Judge has also referred to the income and the affidavits filed by both the sides before arriving at the conclusion. Since inception, the husband has not paid anything for maintenance of children and the order may not be stayed.

5. It is a matter of record that the petition was filed way back in the year 2018. The applicant/husband was not required to pay anything for the maintenance of children, albeit the couple is blessed with couple of them. Again, admittedly, both husband and wife are in the government employment. The impugned order expressly refers to their salary slips and ultimately concludes that the husband will have to pay Rs.7500/- per month to each of the children since the date of petition. For execution of that order, the respondent/wife had to file execution proceeding as well.

6. In our considered view, considering the income of the applicant, it cannot be said that he was not aware about what was coming against him particularly when, admittedly, the application for interim alimony was directed to be decided alongwith the decision of the petition. In fact affidavits were filed by both the sides, in all probability in the light of direction of the Supreme Court in the matter of Rajnesh Vs. Neha, AIR 2021 Supreme Court 569.

7. In view of such peculiar state of affairs, in our considered view, direction in the impugned order which is sought to be stayed, merely expecting the petitioner to pay to the two minor children Rs.7500/- per month is quite fair and justifiable.

8. The Civil Application is rejected.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]