

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1873 OF 2018

Amit Ramanlal Doshi

...Appellant.

Versus

Seema Amit Doshi

...Respondent.

Adv. Samir Kumbhakoni for the Petitioner.

Adv. Anvil S. Kalekar for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. By way of the present Petition exception is taken to the order dated 13th September, 2017 passed by the Civil Judge Senior Division in an application filed by the wife under Section 24 of the Hindu Marriage Act, 1955 granting a monthly maintenance of Rs. 10, 000/-

2. The Petitioner husband has filed divorce Petition being HMP No. 9 of 2015 in which the Respondent wife filed an application under Section 24 claiming interim maintenance. The contention of the Respondent was that the Petitioner is a medical practitioner and earns about Rs. 80,000/- per month. As regards the Petitioner's properties it was stated that the Petitioner is having a bungalow at Tembhurni and the father of the Petitioner is also medical practitioner and they have another bungalow at Wagholi. It is further contented

that the Petitioner owns a swift desire car and considering the disparity, she requested for maintenance of Rs. 30,000/- per month. It was her contention that she is also a doctor, however, her income is not sufficient for her sustenance and to maintain the same standard of living as that of the Petitioner.

3. The Petitioner resisted the application and denied the contentions. It was pleaded that his aged mother as well as 4 to 5 family members including one handicapped brother are dependent on him as his father had expired prior to two years. It was contended that his monthly income was between Rs. 8000/- to Rs. 10,000/- and he is residing in rented house at Tembhurni. It was contended that the Respondent is earning Rs. 15,000/- to Rs. 20,000/- per month and can maintain herself.

4. The Trial Court on consideration of the respective pleadings held that the claim of the Petitioner lacks bonafide. The Trial Court also took into consideration that the Petitioner was owner of Swift Desire car evident from the photocopy of the vehicle information. The Trial Court also considered that the letter head of the Petitioner shows the name of Arihant hospital alongwith the names of his father and the Respondent as medical practitioner and that the hospital is located at Solapur Pune Highway. On the basis of the evidence and

the pleadings the Trial Court assessed the Petitioner's monthly income at Rs. 50,000/- to Rs.55,000/- per month. The Trial Court came to a finding that the standard of living of the parties was of upper middle class and the Respondent wife is also entitled to the same standard of living.

5. Heard Mr. Kumbhakoni, learned counsel for the Petitioner and Mr. Kalekar, learned counsel for the Respondent.

6. Learned counsel for the Petitioner would submit that there is no material which is brought on record by the Respondent No. 1 wife to show that the income of the Petitioner is sum of Rs. 70,000/- to Rs. 80,000/- per month. He would further contend that the Respondent wife is a qualified doctor and drawing a salary of Rs. 26,590/- as per her salary certificate of February 2017. He would further submit that the monthly income of the Petitioner is sum of Rs. 8,000/- to Rs. 10,000/- out of which he has to take-care of his family members which also includes his handicapped brother.

7. *Per contra*, learned counsel for the Respondent has pointed out the properties of the Petitioner which have come on record and which are mentioned in the impugned order. He submits that the Petitioner has deliberately suppressed his income and therefore on the basis of the pleadings and documents which has come on record the Trial

Court has granted maintenance of Rs. 10,000/- per month to the Respondent.

8. Considered the submissions and perused the records.

9. The admitted position is that the Petitioner and the Respondent are both qualified doctors and both of them are working. Whereas the Respondent wife by filing the application has honestly placed on record the salary certificate showing her salary at Rs. 26,590/-, the Petitioner herein has not placed any material on record to disclose his income. The contention that the Respondent has not placed any material to show the income of the Petitioner is without merit. The fact of his income is within the knowledge of the Petitioner and it is expected that at the stage of granting of interim maintenance, necessary material will be placed on record before the Trial Court to assist the Court in assessing the quantum of maintenance. Absence such a factual scenario, the Trial Court had no option, but to estimate the monthly income of the Petitioner on the basis of his place of working, the movables and the immovable properties of the Petitioner. It is well settled that for the purpose of arriving at the quantum of interim maintenance, certain element of guess work is involved. The Trial Court has taken into consideration the usual practice of the local doctors which was within the knowledge of the

Court and has also considered the properties of the Petitioner. The Trial Court has specifically noted that the documentary evidence regarding the income of the Petitioner is not forthcoming. Although it is stated that the Petitioner has been living in the rented house, there is no material brought on record to show that the premises where the Petitioner is residing is on rental basis.

10. It was expected that the submissions made before the Trial Court as regards the Petitioner's income be supported by material. In the absence of any such material on record, the Trial Court has assessed the standard of living of the parties and had granted interim maintenance of Rs. 10,000/- per month. Before this Court, there is no infirmity which is demonstrated from the impugned order.

11. Considering the above discussion, and also the fact that the impugned order is of the year 2017, I find no reason to interfere with the impugned order. Petition being devoid of merits stands dismissed.

12. Needless to clarify that as the main Petition is pending, the same is to be decided by the Trial Court on its own merits and uninfluenced by the observations made herein which are limited for the purpose of testing the validity of the impugned order.

[Sharmila U. Deshmukh, J.]