



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4458 OF 2023

Mr. Abhay Ashok Shanbhag ... Petitioner.

Versus

Mrs. Deepali Abhay Shanbhag ... Respondent.

Mr. Ajit M. Saragave, Advocate for the Petitioner-husband.
Ms. Lalita Kamat, Advocate for the Respondent-wife.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 16, 2024

P. C.:

1. The challenge in the petition is to the order dated 15th November, 2022 passed by the trial Court in Marriage Petition No.401 of 2022, directing the Petitioner to pay the monthly interim maintenance of Rs.8,000/- p.m. to the Petitioner and her daughter – Arya from the date of filing of the Application.

2. The facts of the case are that the Respondent had filed a Petition seeking dissolution of marriage and the Petitioner has filed Petition seeking restitution of conjugal rights. In the Petition seeking dissolution of marriage, an Application was filed for interim maintenance of Rs.10,000/- for the Petitioner and her

daughter. The affidavit of assets and disclosure came to be filed by both the parties. The trial Court considered the comparative incomes of the parties that Petitioner-husband is earning salary of Rs.45,565/- and the Respondent-wife is earning a monthly salary of Rs.23,000/- and directed maintenance of Rs.8,000/- to be paid to the Petitioner and her daughter. The trial Court accepted the position that the parents of the petitioner are dependent on his income, whereas the Respondent is concerned, she claimed that she does not have any separate accommodation and forced to reside with her parents and sister of marriageable age. The trial Court considering the living standard and the status of the parties held that the monthly income source of the Respondent is not sufficient for her support and support of her daughter.

3. Heard Mr.Saragave, learned counsel for the Petitioner-husband and Ms.Kamat, learned counsel for the Respondent-wife.

4. Mr. Saragave, learned counsel for the Petitioner points out the affidavit of assets and disclosure which shows the income of Respondent as Rs.23,000/-. He would further point out the investment made in the form of fixed deposit in the banks as well

as in post office and the LIC. He would submit that the expenditure is shown at Rs.14,000/- for which no details have been given. As regards the child's expenditure, he points out that the expenditure is shown as Rs.6,000/- which he is ready to bear the same.

5. *Per contra*, learned counsel for the Respondent submits that the affidavit of assets would indicate the income of the Petitioner at Rs.45,565/-. She would further submit that the bank accounts of the petitioner which are annexed to the affidavit-in-reply show sufficient balance in the bank account and as such, the sum of Rs.8,000/- which has been granted is not excessive. She would further submit that as she was not aware of the income of the Petitioner the application was made claiming a sum of Rs.10,000/-. She submits that considering the decision of Apex Court in the case of **Rajnish vs. Neha** reported in **2021 (2) SCC 324**, which has been relied upon by the trial Court, merely because the Respondent is earning some income would not be a ground to reject her claim for maintenance.

6. Considered the submissions and perused the record.

7. The affidavit of assets and disclosure of the Respondent-

wife would indicate that her expenditure is about Rs.14,000/- p.m. whereas that of the child is about Rs.6,000/- p.m. and her monthly income is shown as Rs.23,000/- p.m. and the liability are shown as her parents and her sister who is unemployed. As regards the affidavit of assets and disclosure of the Petitioner-husband is concerned, the expenses shown are Rs.27,000/-p.m. and the dependents are the parents, aged about 74 and 56 years. The expenses of about Rs.4,000/- is shown for the medicines of the parents. The income is stated at Rs.45,565/- and there are certain investments in the shares with a holding value of Rs.1,75,937.06/- as well as LIC policies and PPFs. There is also investment of Rs.70,000/- made in the name of the minor daughter. Apart from the same, there is a loan of Rs.13,00,000/- obtained for purchase of the property for which the deductions have been made.

8. The comparative incomes would indicate that the Petitioner is earning approximately Rs.45,000/- as against the income of the Respondent is Rs.23,000/-. However, if the expenditure is considered, the Respondent-wife has herself claimed her expenses of Rs.14,000/- whereas the child's expenses is

Rs.6,000/-.

9. Considering that her personal expenditure is shown as Rs.14,000/- her income of Rs.23,000/-, can for the present purpose, be said to be sufficient. It is not demonstrated that there is such huge disparity between the income of the parties that would necessitate interim maintenance to be paid to the wife. The Petitioner has not disputed his liability to pay for the expenses of the daughter and as both the parents are working the liability of the maintenance on the daughter is required to be shared. As regards the dependents are concerned, the Petitioner has shown his parents his dependents and has shown the amount spent on the medicines, however, the same cannot be said to be such an amount as to warrant consideration. As regards the Respondent is concerned, the dependents are shown as parents and her sister who is unemployed. It cannot be disputed that the responsibility of parents of the Respondent is on the Respondent. However, the amount of monthly expenditure is shown as Rs.14,000/- which is less than the monthly income of Rs.23,000/- earned by the Petitioner.

10. Having regards to the above facts, the amount of Rs.8,000/- which has been granted to the Petitioner and the daughter-Arya is required to be interfered with. Considering that the child's expenses are shown as Rs.6,000/-, the Petitioner is directed to pay the maintenance of Rs.6,000/- for the maintenance of daughter-Arya from the date of filing of interim application. The Respondent-wife is having sufficient income which can take care of monthly expenses and is not required to be granted any interim maintenance at this stage. If subsequently there are any change in the circumstances, necessary application can be made for modification of the order. Similarly, after the evidence has been led, necessary relief as regards the permanent maintenance can be granted, if found established.

11. In view of the above, the Petition is partly allowed. The amount of maintenance is modified to Rs.6,000/- as maintenance for the daughter – Arya from the date of filing of the application for interim maintenance.

(Sharmila U. Deshmukh, J.)