

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2579 OF 2021.

Snehal Praful Yelve

...Petitioner.

Versus

Praful Ramdas Yelve

...Respondent.

Mr. Rahul Arote for the Petitioner.

Mr. Raju D. Suryawanshi for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 2nd April, 2024.

P. C. :

1. By this petition exception is taken to the order dated 13th March 2020 passed by the learned Joint Civil Judge, Senior Division, Kalyan in an Application below Exhibit 70 directing the Petitioner-wife to pay to the husband Rs.10,000/- per month towards monthly maintenance.

2. Marriage Petition No.1410/2016 was filed by the Respondent-husband seeking dissolution of the marriage solemnized between the parties. In these proceedings the

Petitioner-wife as well as the Respondent-husband filed Applications seeking interim maintenance from each other.

3. The Application of the wife came to be dismissed whereas the application of the husband came to be allowed. Present petition has been filed by the Petitioner-wife challenging the order of grant of maintenance of R.10,000/- to the Respondent-husband.

4. Heard *Mr. Rahul Arote for the Petitioner and Mr. Raju D. Suryawanshi for the Respondent.*

5. Learned counsel for the Petitioner would submit that the Petitioner has the liability of repayment of the home loan as well as maintenance of the minor child. He would further submit that the specific case of the Petitioner was that she had tendered her resignation on 8th April 2019 from the Bank where she was working and that at the relevant time she had no source of income.

6. *Per contra*, learned counsel for Respondent would submit that there is no documentary evidence which is brought on record in respect of the source of income of the Petitioner-wife especially when she is claiming that she is repaying the loan and taking care of her expenses as well as the child's expenses. The Trial Court has considered the material on record and has passed the order granting maintenance.

7. Considered the submissions and perused the record.

8. It is not the case of the Petitioner-wife that the Respondent is able to earn any income. As there is no dispute as regards the medical ailments of the Respondent-husband disabling him from earning any income, the inevitable conclusion is that Respondent-husband does not have any source of income to sustain himself. The provisions of Section 24 of the Hindu Marriage Act uses the term "Spouse" and would include the husband or the wife who is unable to maintain himself/herself during the pendency of the proceedings. However the husband will have to satisfy the Court that due to his physical disability he

is handicapped to earn and support his livelihood. The inability of the Respondent to earn a living has not been disputed by the Petitioner. As the Respondent-husband is unable to maintain himself, the Petitioner-wife who had source of income working as Branch Manager was liable to pay interim maintenance. The contention is that during the pendency of the Application the Petitioner-wife had resigned from her earlier service and in support had filed the resignation which has been tendered to the Bank. The Trial Court has rightly observed that if the contention is that she is looking after the expenses of the child as well as paying the home loan, it is necessary for her to disclose the source from which the expenses being met. It is therefore clear that even after resignation from the bank, the Petitioner- wife was earning and had a source of income.

9. Learned counsel for the Petitioner does not dispute that as of today the Petitioner-wife is earning. The Trial Court has noted that Petitioner-wife has not filed any documentary evidence in respect of her income. If it was the contention of the Petitioner that she had the liability of payment of certain

expenses it was necessary for her to place the same on record so that the Trial Court could have assessed the quantum of maintenance which is to be granted to the Respondent-husband. It appears that there was no such evidence which was brought on record. It is well settled that at the stage of grant of interim maintenance in absence of any material, certain element of guess work is involved and considering the income of the parties, the Trial Court ascertains quantum of maintenance. In the present case, the Trial Court has considered the submission of learned counsel for the Respondent that Petitioner-wife was serving as Branch manager and earning Rs.65,000/-. Even if it is taken that she has certain expenses to be met, it was incumbent upon her to place the necessary material before the Trial Court so that the Trial Court would have been in position to assess the quantum of maintenance to be granted. Unfortunately, the same has not been done in the present case.

10. Considering the income, the Trial Court has granted a sum of Rs.10,000/- to the Respondent-husband. There is no infirmity which is demonstrated from the order. As such the

petition is devoid of merits and stands dismissed. Needless to clarify that in event of change of circumstances, it is always open for the Petitioner-wife to file necessary application and seek modification of the order.

[Sharmila U. Deshmukh, J.]