



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7633 OF 2023

Rachel Smith Dsouza

...Petitioner.

Versus

Smith Napoleon Dsouza

...Respondent.

Mr. Bernardo Reis and Mr. Krishna Yadav i/b Arun Sankpal & Co., for the petitioner.

Ms. Jonifa D'abare i/b JRA law Associate for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 12, 2024.

P. C. :

1. Heard.

2. By this petition, challenge is to the order dated 29th April 2023 passed by the Sessions Court in an application filed by the petitioner – wife under Section 36 of the Divorce Act, 1869 rejecting her application for alimony *pendente lite* and granting a meager amount of Rs.2,000/- per month *pendente lite* towards the expenses of proceedings.

3. The petition for divorce was filed by the respondent–husband under the Divorce Act, 1869 in which the wife had filed an application

under section 36 of the Divorce Act, 1869. As mandated by the Apex Court in the case of ***Rajnish v. Neha [2021(2) SCC 324]*** the affidavit of disclosure of assets and liabilities was filed by both the parties. In the affidavit, respondent–husband declared his monthly income as Rs.1,79,600/- and thereafter stated his liabilities, i.e., personal loans, loan from the employer, etc and has offset the entire monthly income against the monthly expenses. The affidavit of disclosure filed by the petitioner – wife states that she is unemployed and has no source of income.

4. Admittedly, the parties were married and due to the dispute, the petitioner-wife has left the matrimonial house. As the petitioner is unemployed, it is the obligation of respondent–husband to make provision for her maintenance. The Apex Court in ***Rajnish v. Neha (supra)*** has laid down elaborate guidelines as to the factors to be considered while deciding the quantum of maintenance such as the comparative income of parties, dependents of parties, expenses etc., and thereafter the Court is expected to fix the quantum of interim maintenance. From the impugned order, it appears that the trial Court has completely ignored the guidelines given by the Apex Court in ***Rajnish v. Neha (supra)*** while declining to grant any interim maintenance to the petitioner wife. The reasons for declining interim

maintenance are that she has not specified in her application the reason why she is not able to get any job. The trial Court presumed that the petitioner-wife can earn if she does some efforts and such efforts are not demonstrated. It is unfathomable that the trial Court while deciding an application for interim maintenance would adopt such a reasoning for the purpose of declining the relief of interim maintenance to the petitioner-wife, who is admittedly unemployed. Time and again judicial pronouncements have made it clear that it is not the potential of the wife to earn which is required to be taken into consideration but what is required to be considered is the factum that the wife is unemployed and is therefore entitled to maintenance. Merely possessing higher qualification cannot *ipso facto* be a reason to deny interim maintenance to an unemployed wife.

5. In the present case, the trial Court has gone one step further and has observed that the petitioner-wife is expected to provide the exact branch of engineering from which she has graduated and has held that it is the suppression of fact. The reasoning adopted by the trial Court is completely flawed to say the least, clearly unsustainable and cannot be supported on any ground whatsoever. This Court has refrained from making any further observation although the observations and findings cannot be said to be an exercise of judicial

application of mind. The trial Court, though thoroughly irrelevant, has taken into consideration the duration of stay of petitioner-wife in the matrimonial house. All that is required to be seen is whether the petitioner-wife has any source of income to sustain herself during the pendency of litigation. The view taken by the trial Court cannot be said to be legally sustainable much less the balanced view as is sought to be portrayed. Even while granting the expenses of the proceedings *pendente lite*, there is no consideration and meager amount of Rs.2,000/- per month has been granted without considering the high income earned by the respondent-husband.

6. In view of the above, the impugned order is clearly unsustainable and cannot be supported on any ground whatsoever. Resultantly, the impugned order dated 29th April 2023 is hereby quashed and set aside. The application filed by the petitioner-wife for interim maintenance is remanded to the trial Court to be considered afresh in light of the guidelines laid down by the Apex Court in the case of **Rajnish v. Neha (supra)**. The trial Court is expected to take a balanced view in the matter.

7. Petition is allowed in above terms.

8. In view of the disposal of writ petition, civil/interim

application(s) taken out in this writ petition does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]