

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.345 OF 2023

Shrikant Umesh Solanki

...Petitioner.

Versus

Aartiben Prakashbhai Darji And Anr

...Respondent.

Mr. Vasant Ghorpade for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : 1st April, 2024.

P. C. :

1. By this petition the challenge is to the order dated 1st October 2022 passed by Civil Judge, Senior Division granting interim maintenance of Rs.20,000/- to the respondent-wife from the date of filing of the Application. The facts are that Matrimonial Petition No.200 of 2018 came to be filed by the petitioner under Section 11 of the Hindu Marriage Act,1955 seeking declaration that marriage between the parties solemnized on 7th July 2016 be declared as null and void. It was

contended that the petitioner upon inquiry learnt that prior to the marriage of the Petitioner with the respondent No 1, the Respondent No 1 was married to Respondent No.2 which marriage has not been dissolved by a Court decree. In these proceedings an Application came to be filed under Section 24 of the Hindu Marriage Act, 1955 claiming interim maintenance. It was contended by the respondent-wife that she was not having any independent source of income whereas the petitioner was earning a sum of Rs.3 lakhs from his business. The Respondent No 1 claimed Rs 25,000/ per month for herself and Rs 15,000/ for the child and Rs 75,000/ towards litigation expenses and monthly litigation expenses of Rs 10,000/.

2. Application came to be resisted by the petitioner. It was contended that Respondent No 1 is not entitled to any maintenance as the marriage between them is null and void. It was further contended that respondent No.1 is having source of income and earning a sum of Rs.2 lakh per month from her profession.

3. The Trial Court upon consideration of the Affidavit of Disclosure of Assets and Liabilities of the parties observed that the Petitioner is a real estate agent and owns a flat jointly with his mother and is also owner of Swift Dzire car. The Trial Court considered that in the Affidavit the petitioner has stated his income at Rs.16,895/- per month whereas the statement of income for the Assessment Year 2020-2021 reveals that his net surplus income is around Rs.5 lakhs per month and that his bank accounts discloses sufficient income and cash in hand. Based on the documents, the Trial Court held that the Petitioner earns minimum Rs 40,000/ per month from his business. The Trial Court came to a *prima facie* finding that the Respondent No 1 is not earning any income, whereas the petitioner is earning a minimum amount of Rs.40,000/- per month from his profession and as such granted a monthly maintenance of Rs.20,000/- by order dated 1st October 2022.

4. *Vide* order dated 13th January 2023 notice was issued to the respondents and subsequently appearance was caused on behalf of respondent No.1. However none appears for

respondent No.1 and as such the matter is taken up for hearing.

5. Heard Mr. Vasant Ghorpade, learned counsel for the Petitioner.

6. Learned counsel for the petitioner submits that the petition has been filed seeking decree of nullity on the ground that the marriage has been solemnized in violation of the conditions mentioned in Sections 5 of the Hindu Marriage Act, 1955. He would further submit that the previous marriage not being dissolved by decree of divorce has been admitted by respondent-wife by way of affidavit dated 17th February 2021, annexed at page 15 of the additional affidavit. Pointing out to the said affidavit he submits that respondent No.1 has admitted that she was previously married to respondent No.2 and at that time she was a minor. He would further point out that it is the specific admission in the affidavit that the marriage of respondent No.1 with respondent No.2 has been dissolved as per the custom prevailing between the parties. According to him without a decree of divorce being passed the marriage between

the Respondent No 1 and 2 subsisted and as such the marriage between the Petitioner and the Respondent No 1 being void marriage, the respondent No.1 is not entitled to any maintenance. He would further submit that as far as child is concerned there is an application for DNA test of the child pending as the respondent No.1-wife had left the matrimonial home within a period of one week and the paternity of child itself is in dispute.

7. Considered the submissions and perused the record.

8. The Application for maintenance has been filed by way of Interim Application under Section 24 of the Hindu Marriage Act which provides for payment of interim maintenance to spouse who is not having any independent source of income sufficient for his or her support. It is settled that the interim maintenance is required to be granted to ensure that the spouse who is without any independent source of income is financially supported so that he or she is able to sustain herself during the pendency of the proceedings and to ensure that the said party is

able to pursue the litigation without any financial handicap.

9. In the present case the submission raised is that the Petition seeks divorce under Section 11 of Hindu Marriage Act, 1955 and as the marriage is sought to be declared as void no maintenance can be granted. The allegation is that the Respondent No.1 at the time of marriage had a spouse living. The provisions of Section 11 of the Hindu Marriage Act, 1955 provides that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. Section 5 describes the necessary conditions for valid hindu marriage and one of the condition is that neither party has spouse living at the time of marriage. In the present case, affidavit of respondent No.1-wife indicates specific pleading that the marriage of respondent No.1 with respondent No.2 has been dissolved by deed of divorce as per the custom prevailing between the parties. In this context, it will be beneficial to refer to Section

29(2) which is a saving provision protecting the rights acquired through custom or usage. It will be a matter of evidence whether there is custom prevailing in the community of the Respondent No 1 and 2 as pleaded and whether the custom or usage has acquired force of law by being consistently followed by the members of the community.

10. It is not disputed that there was a marriage solemnized between the petitioner and respondent No.1 and as such whether the marriage is null and void marriage will be decided only after the evidence has been led by the parties. It is the specific pleading of respondent No.1 that although there was a marriage between the parties, the same has been dissolved by a deed of divorce which is prevailing as per the custom governing the parties. It is therefore for the respondent No.1 to prove after evidence has been led that the marriage has been dissolved. Apart from the above, there is no other submission which has been advanced for challenging the order of grant of interim maintenance. In my view even if there is strong possibility of marriage being declared null and void, the Respondent No 1

has the basic right to claim interim alimony particularly when it is not disputed that the petitioner had entered into a marriage from which there is a child begotten although the paternity of the child has been denied by the petitioner. The Respondent No.1 till the marriage is declared null and void is entitled to the basic right to claim interim maintenance under Section 24 of Hindu Marriage Act, 1955.

11. As far as decision of Delhi High Court in ***Shammi Sehgal vs. Ridhima Kruch, MAT. APP. (F. C.) 193/2022 and CM Appl. 53068-71-2022*** is concerned the Delhi High Court has held that a document of mutual divorce prepared inter se the parties without approaching a court of law is of no consequence and has no force in the eyes of law. In that case there is no pleading that the marriage was dissolved as per the custom prevailing between the parties. The decision being distinguishable on facts is clearly inapplicable to the present case.

12. As regards the decision in the case of ***Sunder Lal Saini vs. Meena Saini, CRL. Rev. P. 129/2021*** the same has been

rendered in the context of section 125 of Cr.P.C. In that case the challenge was to the final order of grant maintenance. The parties to the litigation were in subsisting marriage with different individuals at the time of their marriage to each other. In the facts of the said case, the Court considered the provisions of Section 5 and Section 11 of Hindu Marriage Act, 1955 and in that context the High Court held that the Respondent had not been able to produce any document that she has taken divorce as per custom in panchayat. In the present case, the stage of evidence has yet to come and the relief of interim maintenance cannot be refused only on the ground that the Petition has been filed under Section 11 of the Hindu Marriage Act, 1955.

13. As regards the contention that the child from the said marriage is not begotten from the petitioner-husband at least at this stage there is no material placed on record to indicate the said fact. In any case, the maintenance has been granted to the respondent -wife. Although it is the claim of the petitioner based on the social media account that respondent wife is working as an actor, the Trial Court has accepted *prima facie* that the

Respondent No 1 has no source of income. Apart from the social media account nothing has been produced to show the income of the Respondent No 1. Accordingly, I find no reason to take a different view. There is no submission advanced as regards quantum of maintenance.

14. In light of discussion above, there is no merit in the petition. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]