

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8731 OF 2023
WITH
INTERIM APPLICATION NO.489 OF 2024
IN
WRIT PETITION NO.8731 OF 2023

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Jitendra B. Gandhi .. Petitioner.
v/s.
Kiran J.Gandhi & Another .. Respondents.

Mr. Omprakash Pandey with Adv. Alok Singh, for the Petitioner.
Adv. Yogendra M. Kanchan, for Respondent No.1.
Mr. Shivaji Shinde 'B' Panel Counsel with Adv. Sandip Babar, AGP for
Respondent No.2-State.

CORAM: FIRDOSH P POONIWALLA,J.
DATE : 13th DECEMBER, 2024.

PC:-

This Petition is filed impugning Order dated 9th December, 2021 passed by the Family Court, Bombay at Bandra whereby the Petitioner has been directed to pay maintenance of Rs.15,000 per month to the wife and Rs.10,000 per month to the child under Section 24 of the Hindu Marriage Act. Further, the Petitioner has also been directed to pay the tuition fees and other school related fees of the child.

2 The learned Counsel for the Petitioner submitted that the Family Court has decided the quantum of maintenance on the basis of the status and income of the parents of the Petitioner and not on the basis of the income of the Petitioner.

3 The learned Counsel referred to a Salary Certificate dated 15th February, 2023 issued by Shree Ram Silk Mills stating that the Petitioner was working with Shree Ram Silk Mills and was getting a salary of a sum of Rs.14,154/-. Further, the learned Counsel for the Petitioner submitted that the document produced at page 98 of the Compilation of Documents, showing that the Petitioner is a Director in Gandhi Silk Mills, is a forged document.

4 The learned Counsel for the Petitioner also referred to a document at page 108 of the Rejoinder and submitted that the said document shows that the Petitioner was not a Director of Shree Krishna Silk Mills.

5 The learned Counsel for the Petitioner also referred to a Certificate issued by the Chartered Accountants of Gandhi Silk Mills Limited, stating that only the parents of the Petitioner were Directors of Gandhi Silk Mills and not the Petitioner. He submitted that the Petitioner was not a Director of Gandhi Silk Mills. The learned Counsel for the Petitioner also referred to certain Share Certificates at pages 119 and 120 of the Rejoinder and a maintenance bill at page 123 of the Rejoinder in order to show that certain flats were not owned by the Petitioner.

6 Further, the learned Counsel for the Petitioner also referred to page 124 of the Rejoinder and submitted that the said documents showed that one Harish Chand was the Proprietor of Gandhi Silk Mills and not the Petitioner. He further referred to page 84 of the Rejoinder and submitted that the Petitioner had taken a Health Insurance Policy which is valid till 9th May, 2025. He submitted that the Respondent had taken

advantage of this policy in the past, and, in future, can also take advantage of this policy.

7 On the basis of these documents, the learned counsel for the Petitioner submitted that the conclusions arrived at by the Family Court for granting the said maintenance and payment of school fees, are not correct and require to be set aside.

8 On the other hand, the learned Counsel for the Respondent referred to page 98 of the Compilation of Documents and submitted that the same showed that the Petitioner was a Director of Gandhi Silk Mills. He submitted that, although it was the case of the Petitioner that the same was a forged and fabricated document, no police complaint had been made so far complaining about the same.

9 The learned Counsel for the Respondent referred to the Income Tax Returns of the Petitioner at page 91 of the Compilation of Documents and especially the balance sheet at page 94 of the Compilation of Documents. He submitted that the balance sheet shows that the Petitioner had given a loan of Rs.20,65,000/- to his father. He submitted that these documents evidence that the Petitioner and his family members were deliberately trying to show that the Petitioner's income was low, so as to avoid paying maintenance.

10 The learned Counsel for the Respondent also referred to paragraph 9 of the Written Statement of the Petitioner in the Family Court, wherein it had been admitted by the Petitioner that he was, at one

stage, operating a factory. The learned Counsel for the Respondent submitted that, considering all these factors, there is no infirmity in the order of the Family Court and the same requires to be upheld.

11 I have heard the learned Counsel for the parties and perused the documents on record.

12 The record clearly shows that the parents of the Petitioner are wealthy persons who own Silk Mills and flats in Mumbai. In paragraph 7 of the impugned Order, it has been recorded that the Income Tax Returns of the Petitioner showed that he was earning Rs.3,00,000/- per annum for a particular period. The document at page 98 of the Compilation of Documents clearly shows that the Petitioner was, at one point of time, a Director of Gandhi Silk Mills, and that is why he has signed the said document as Director thereof. Further, as rightly pointed out by the learned Counsel for the Respondent, it cannot be believed that Petitioner is earning only Rs.14,000/- per month, in light of his own balance sheet, at page 94 of the Compilation of Documents, which shows that he has given a loan of Rs.20,65,000/- to his father.

13 In my view, all these circumstances clearly show that the case put up by the Petitioner is not correct and that the Petitioner is capable of paying the said maintenance and the school & other fees of the child, as directed by the Family Court. In the light of the aforesaid discussion, I find that there is no perversity in the Family Court coming to the conclusion that it has arrived at in paragraphs 9 and 10 of the impugned Order, which read as under:-

“9:- During course of argument it was asked to respondent and his learned counsel about yearly turn over of Gandhi Silk Mill. Respondent’s father was present in the Court and he has stated that yearly turn over of Gandhi Silk Mill is around Rs.2 Crore. So, it becomes clear that father of the respondent is in Silk Mills Business. Respondent has also claimed that he is working for one of the Silk Mill but claims that he does not work with father but somebody else. So this is a case of the rich father and poor son, as per their stands, which can not be believed. Since the father of the respondent is very much present in the Court, it can be assumed that respondent and his father are hand in glove and are part of joint family, but for the purpose of the tax and to avoid maintenance separate income tax returns are filed. So that liabilities of tax and maintenance can be avoided.

10:- It is not undisputed that petitioner is not earning. Respondent is duty bound to maintain wife and child. Respondent must pay entire tuition fee, bus fee and other expenses of the child related to school. Considering needs of petitioner who is in the school and third stage of the cancer treatment and considering income of respondent, which is suppressed, it would be appropriate to direct respondent to pay maintain of Rs.15,000/- per month for wife and Rs.10,000/- per month for the child. He can also be directed to pay entire school fees, bus transport fees and other fees related school directly to the school. So, with this conclude and proceed to pass the following order:-

1 Application stands allowed.

2 Respondent is directed to pay maintenance of Rs.15,000/- per month for the wife and Rs.10,000/- per month for the child, in all Rs.25,000/- per month to the petitioner under Section 24 of the Hindu Marriage Act.

3 Order of interim maintenance shall take effect from date of application i.e. 26.02.2021

4 Respondent to remit arrears maintenance as on date in 4 equal monthly installment starting from 15th January 2022 till 15th April 2022.

5 He shall transfer maintenance amount directly in the bank account of the petitioner.

6 Petitioner shall inform her bank account details i.e. IFSC Code, bank account number, branch name to the Respondent.

7 Respondent is also directed to pay tuition fee or other school related fees directly in the school.

8 Order dictated and declared in open Court in presence of learned Counsel for petitioner.”

14 In the light of the aforesaid discussion, and for the aforesaid reasons, in my view, the impugned Order dated 9th December, 2021 does not called for any interference by this Court in its writ jurisdiction. Hence, the Writ Petition is dismissed. No order as to costs.

15 In light of the dismissal of the Writ Petition, the Interim Application will also not survive and the same is also disposed of.

(FIRDOSH P. POONIWALLA,J.)