



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.2497 OF 2023

- 1) Priya w/o Sachin Senger,
Aged about 36 years, Occ. Nil, R/o,
C/o Shri Jairaj Singh Chavhan, Ganati
Nagar, Godhani Road, Zingabai Takli,
Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) Sachin s/o Kalyansingh Senger
Aged about 39 years, Occ. Service, R/o
Village Indora, Tah. Mauda, Dist.
Nagpur.

... Respondent(s)

Shri Sonali Saware-Gadhawe, Advocate for the Petitioner/s
Shri S.T. Dhurwey, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 11.01.2024

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

3. In this petition, the order below Exh.13 dated 02.01.2023 passed by Family Court No.3, Nagpur, rejecting the application moved by the petitioner for interim maintenance, is under challenge.

4. The ground for rejection of the application for interim maintenance is that, the marriage between the petitioner and the respondent is questionable and it needs to be decided on the basis of the evidence of the parties.

5. It is the case of the respondent/husband that even before the dissolution of his earlier marriage, he performed the marriage with the present petitioner and therefore, the marriage is not valid.

6. The learned counsel for the petitioner has drawn attention of this Court to the proceedings filed by the petitioner and the respondent jointly before the Court under Section 482 of the Code of Criminal Procedure for quashing the offence registered at the behest of the petitioner under Section 498A of the Indian Penal Code, wherein the respondent has admitted that the petitioner is

his wife and they are staying together after the settlement between them, as husband and wife.

7. Furthermore, the suit filed by the respondent for declaration that there was no valid marriage between the respondent and the petitioner, came to be dismissed vide judgment and order dated 27.09.2019 passed by 16th Jt. Civil Judge Senior Division, Nagpur in Regular Civil Suit No.527 of 2017.

8. No doubt the appeal is pending against the said judgment however, the fact remains that, till date there is no declaration by the Civil Court in favour of husband. On the contrary, in the proceedings before the High Court, the respondent has recognized the petitioner as wife.

9. In that view of the matter, the order passed by the Family Court, denying the interim maintenance to the petitioner is not sustainable on the eyes of law for one more reason that, the Division Bench of this Court in the case of *Prabhubhai Ranchhodbhai Tailor Vs. Mrs. Bhartiben Prabhubhai Tailor*¹, has

1 2004(3) ALL MR 571

held in a similar matter that, the second wife is entitled for maintenance. In the circumstances, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The impugned order dated 02.01.2023 passed by Family Court No.3, Nagpur in Petition No.A-1433/2018, is hereby quashed and set aside.
- (iii) The petitioner is held entitled for the interim maintenance. The Family Court No.3, Nagpur is directed to determine the amount of interim maintenance and pass necessary orders within one month from the next fixed date.
- (iii) The Family Court No.3, Nagpur is directed to expedite the matter. Both the parties undertakes to co-operate the Court for deciding the matter at the earliest.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]