

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2613 OF 2024

Mrs. Michelle Rayan Scott

....Petitioner

Versus

Mr. Rayan Scott

....Respondent

Adv. Srushti Kadam i/b. Adv. Shirin Merchant, for the
Petitioner.

Adv. M.K. Irani a/w. Adv. M.I. Choudhary and Adv. Niyati E.,
for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 7th JULY, 2025

PRONOUNCED ON : 1st AUGUST, 2025

ORDER :

1) The Petitioner-Wife, by invoking the powers of this Court under Article 227 of the Constitution of India, has filed the present Writ Petition challenging the order dated 11.09.2023, below Exhibits 5 and 17, passed by the Judge, Family Court No.4, Pune, in PA No.867 of 2019.

2) The facts, shorn of unnecessary details, are as follows:

[i] The Petitioner and Respondent were married on 19.11.2004.

[ii] Two issues are born out of the said wedlock, namely, Ethan Scott on 10.11.2009 and Kian Scott on 19.11.2013. Both the children are in care and custody of the Petitioner.

[iii] Dispute arose between the parties in the year 2019 when the Respondent started demanding Divorce from the Petitioner.

[iv] The Petitioner was beaten up by the Respondent in February 2019. Thereafter, he started residing separately.

[v] The Respondent filed the Petition for Divorce in the Family Court under the provisions of Indian Divorce Act, 1869, bearing PA No.867 of 2019.

[vi] During the pendency of the Divorce Petition, the Respondent filed an Application at Exhibit 5 for interim custody of the minor children.

[vii] The Respondent was bearing all the household expenses prior to March, 2019. In addition, he would give Rs. 10,000/- per month and Rs. 2,500/- in Sodexo passes to the Petitioner for her expenses.

[viii] The Respondent abandoned the Petitioner and children in January, 2021, and shifted to his palatial house at Daund. He was forcing the Petitioner to agree for Divorce.

[ix] The Respondent also stopped paying fees of children and the minimum amount he was giving towards the household

expenses. He also started harassing the Petitioner by curbing her finances in order to coerce her to agree for a Divorce.

[x] Because of the prevailing circumstances, the Petitioner, who had never served previously, secured a job for herself at a meager salary of Rs. 15,000/- per month as a school teacher and was working at Pearl Drop School.

[xi] The amount of Rs. 15,000/- was not sufficient for maintaining herself along with her minor children. Therefore, she was constrained to file Interim Application at Exhibit 17, *inter alia*, claiming maintenance for herself and children with a further prayer to restrain the Respondent from entering their matrimonial house and also to follow a proper parenting plan.

[xii] The Respondent filed his reply-cum-counterclaim to the said Application.

[xiii] The Application filed by the Petitioner at Exhibit 17, along with the Application filed by the Respondent at Exhibit 5, for custody of their minor children was decided vide common order dated 11.09.2023, passed by the Judge, Family Court No.4, Pune.

3) The Judge, Family Court, Pune, has partly allowed the Applications at Exhibits 5 and 17. The maintenance of Rs. 15,000/- per month to each son was granted by the Family

Court from the date of Application till the final decision of the Divorce Petition. The Husband was granted visitation rights in the form of overnight access to his sons Ethan and Kian on every 1st and 3rd Saturday from 11:00 a.m. up to Sunday 6:00 p.m.

4) So far as Summer, Winter and Christmas Vacations are concerned, half of the vacation was granted to each of the parent with mutual understanding. The claim of the interim maintenance of the present Petitioner-Wife has been rejected. After the rejection of her claim for maintenance, the Petitioner has challenged the order to the limited extent of rejection of her claim for maintenance.

5) According to the Petitioner, the income earned by her is Rs. 15,000/-, per month which is far less than the amount required for day-to-day expenses of three persons, in today's day of inflation.

6) The Respondent has abandoned her along with her children without making any provision for them. She has been forced to live separately from the Respondent because of his violent tendency, unpredictable nature and abuses given by him to the Petitioner. Because of his unpredictable and violent nature, the children are also mentally disturbed. According to

her, the Respondent has miserably failed to perform his obligations towards her and their children.

7) It is the contention of the learned Advocate for the Petitioner that, despite being extremely affluent with a good income, the Respondent has neglected to maintain his wife and children. The Respondent is working as Program Manager-Digital Analytics at Eclerx Services Limited, Hinjewadi (IT Industry) with a good salary of approximately Rs. 2 lakhs per month. The Petitioner had to beg the Respondent even for necessary expenses like school fees of the children, electricity bill of the house, etc. Her income of Rs. 15,000/- is extremely insufficient to meet the daily needs of herself and her two children. She has borrowed funds from her parents, friends and relatives to take care of the expenses of daily needs on various occasions.

8) It is her further contention that, in addition to the daily expenses, she also needs an amount of approximately Rs. 3,000/- per month for maid, about Rs. 3,000/- for petrol to drop and pick up the children from the coaching and activity classes, Rs. 2,000/- for groceries, school supplies, medicines, etc.

9) In such a situation, she is not able to manage from her meager salary. It was, therefore, prayed by her that, the

Respondent should be directed to pay Rs. 80,000/- per month to the Respondent towards interim maintenance, apart from continuing to pay the EMI towards housing loan availed by them to the tune of Rs. 40,000/- per month.

10) The Application of the Petitioner was opposed by the Respondent by filing reply affidavit. It is his contention that, the allegations made by the Petitioner are totally false. The allegations of Domestic Violence, as alleged, are made with dishonest and *mala fide* intention. He has denied the allegation of being violent. According to him, the question of his violent tendency does not arise, since they have not spoken to each other since the filing of the present Petition. He has a family home at Daund, which is equipped with practicing sports for the children, in order to encourage and ensure their participation in sporting activities. He has installed various equipments and gadgets at his home at Daund. He has a full-sized snooker table, rifle shooting and boxing equipment, all this is installed for their overall development and interest. He has spent approximately an amount of Rs. 15 lakhs in the year 2021, for the said purpose. He is taking the children out for vacations in India and when possible abroad. Therefore, he is taking good care of the children and nurturing them.

11) According to him, the Petitioner has been employed with the school since last five years. Therefore, there is no question of any grant of maintenance to her. She has suppressed her income, which she has derived from investments in Fixed Deposits (**FDs**).

12) On the contrary, it is his stand that, in fact, the present Petitioner should be directed to contribute 50% towards the expenses of their sons, since she is earning. She and their sons are also residing in 2.5 BHK fully furnished apartment free of cost. It is further submitted by him that, he has complied with the order of maintenance granted in favour the children from the date of order.

13) Heard Ms. Srushti Kadam as well as Mr. M.K. Irani and perused the documents. Both parties have placed on record a catena of decisions in support of their submissions.

14) The jurisdiction of this Court in Writ Petition under Article 227 of the Constitution of India is very limited. Though various reliefs were granted in the impugned order, the Petitioner has limited her challenge only to the extent of prayer clause (2), whereby her prayer for grant of maintenance was rejected by the Judge Family Court. Therefore, the scope of the present Writ Petition is also limited to the extent of perversity,

if any, recorded by the Judge, Family Court, while rejecting the claim of maintenance in favour of the present Petitioner.

15) The Judge of the Family Court has observed in the order that, according to the judgment of ***Rajnesh V/s. Neha & Anr¹***, the Hon'ble Supreme Court has held that, even if the wife is earning, it cannot operate as a bar for awarding maintenance to the wife.

16) In view of the aforesaid judgment, the Judge of the Family Court has assessed the income of both, the Petitioner as well as Respondent. It is observed by the Judge of the Family Court that, the Petitioner is receiving a salary of Rs. 38,000/- per month. This is besides the invested amount of Rs. 4 lakhs in the FDs. According to him, the fact of investment of 4 lakhs in the FDs goes against the disclosure made by the Petitioner, hence an adverse inference is required to be drawn against her, to hold that the salary which she is receiving is more than sufficient for maintaining herself. After incurring expenses for all the daily needs, certain amount is saved, which she has invested in FDs.

17) It is held that, the stand taken by the Respondent in her Application and affidavits filed by her are not consistent with

¹ (2021) 2 SCC 324

each other. It is thus held that, since she has assets in the form of FDs of Rs. 4 lakhs, it would give rise to the conclusion that, she is earning more than sufficient.

18) On perusal of the affidavit of assets and liabilities of Petitioner, that is placed on record, it is disclosed by the Petitioner that the monthly expenses of the Respondent is to the tune of Rs. 54,000/- and expenses towards children are Rs. 30,000/- per month. She has disclosed her monthly income as Rs. 37,790/-, which is supported with the Bank Statement.

19) Upon going through the Bank Statement of IndusInd Bank of the Petitioner, deposits in her savings account of Rs. 15,000/-, Rs. 13,000/-, and Rs. 10,000/- can be seen to have been done, starting from 01.01.2021. The amounts are meager, therefore, they cannot be said to be sufficient for the sustenance of the Petitioner along with her two growing children.

20) So far as the FDs are concerned, they were invested in the year 2015 and deposited for a period of three years. Therefore, they cannot be considered a source of income for the Petitioner to draw an adverse inference. The Petitioner has disclosed all her three bank accounts, which do not show any large amounts deposited. As against that, the Respondent has disclosed his

monthly income as Rs. 3,16,000 and his annual income as Rs. 42,19,646/-.

21) While deciding a claim for interim maintenance, the Applicant is required to establish that she does not possess sufficient means or income to maintain herself and that the Respondent has adequate income to provide for her maintenance, which she is being denied.

22) In the present case, the Petitioner-Wife has admitted to an income of Rs. 37,000/- per month. At the same time, the Respondent-Husband has admitted his income as Rs. 3,16,000/-. Apart from his salary, the Respondent has also filed account statements from Kotak Mahindra Bank and Punjab National Bank for the years 2019-20 and 2020-21. He has produced coloured photo copies of a snooker table, cricket pitch, and boxing kit. The amenities that are available at his bungalow in Daund are indicative of the affluent lifestyle of the Respondent.

23) The Petitioner has stated on oath that the Respondent was paying a negligible amount of Rs. 10,000/- along with Sodexo coupons worth Rs. 2,500/- per month, which have been stopped since January 2020. It is the stand of the petitioner that, while the Respondent was residing with her, he was

taking care of all the expenses such as groceries, travelling, electricity bills, property tax, school fees, etc. Now, he has stopped making such payments. It is also stated on affidavit that, the Respondent makes payments according to his own whims and fancies, whenever and whatever he feels like. Even though the Respondent is taking care of the educational expenses of the two sons, apart from that there are certain other necessities requiring additional expenses.

24) Undisputedly, the Petitioner is residing in the matrimonial house, i.e., Flat No. A-12, Brahma Avenue, Kondhwa, Pune, merely having a roof on her head is not sufficient for a mother with two young sons to manage day-to-day expenses with her salary of Rs. 38,000/- per month. Tuition fees, groceries, clothes, sports expenses for the children, and many other necessities, need to be taken care of, which is not possible with the salary of Rs. 38,000/- per month. Though she has disclosed her FDs, they are not of any assistance for day-to-day expenses.

25) In contrast, the Respondent, from the affidavit of assets and liabilities filed by him, is clearly leading a very affluent lifestyle. The Respondent has also invested in and installed a full-size snooker table, rifle shooting, and boxing equipment in

his house at Daund. He is boasting to have invested approximately Rs. 15 lakhs in the year 2021 for this purpose. He also has a large library of 300 books for children to read.

26) Considering the amenities which have been installed by him in his house, he is certainly earning much more than the Petitioner-Wife. The investments made by him also are of huge amounts. His FDs are 85 lakhs, mutual funds investments are 2,50,000/-. The income of Rs. 3,20,000/- per month as disclosed by him can nowhere be compared to the income of the Petitioner-Wife. Since the Petitioner himself has left the matrimonial home as has been admitted by him, it is his responsibility to maintain his wife, who is residing along with his two children.

27) The Petitioner is receiving a salary of Rs. 38,000/- per month, which is disclosed by her. As compared to her, the Respondent is receiving Rs. 3,20,000/- per month. Though the Judge of the Family Court, Pune has granted maintenance of the children at the rate of 15,000/- per month to each of them, the Judge of the Family Court has rejected the claim of the Petitioner for maintenance by holding that, since she is earning salary of Rs. 38,000/- per month as a Teacher in English Medium School, she has also invested in the FDs. Hence, she is

receiving more than sufficient income, thereby drawing adverse inference against her that, the salary, which she is receiving is sufficient for maintaining herself. In view of FDs in her name, an adverse inference is drawn by the Judge, Family Court holding that if she can invest in the FDs, she must be earning sufficient income to maintain herself.

28) This observation of the Judge, Family Court, is clearly contrary to the observations made by the Hon'ble Supreme Court in the case of *Chaturbhuj V/s. Sita Bai*², wherein it is categorically held that, where the personal income of wife is insufficient she can claim maintenance under Section 125, Cr.P.C. The test is whether the wife is in a position to maintain herself with the same standard as she used to in her matrimonial house. The expression "unable to maintain herself" does not mean wife must be absolutely destitute before she can apply for maintenance under Section 125 of the Cr.P.C.

29) In the judgment of *Rajiv Verghese V/s. Rose Chakkramankkil Francis*,³ the Hon'ble Supreme Court has observed that, if the wife becomes accustomed to certain standard of living in her matrimonial home, she is entitled to

² (2008) 2 SCC 316

³ 2024 SCC OnLine SC 3367

enjoy the same amenities of life as she would have been entitled to in her matrimonial home.

30) The above observations made by the Hon'ble Supreme Court are squarely applicable to the facts of the present case. From the affidavit of the Respondent, it can be discerned that, he is living highly affluent lifestyle with all the luxuries. As against that, the Petitioner is left to cope up with the two young children, their education and day-to-day expenses. Even otherwise, comparing the income of the Respondent to that of the present Petitioner, it can certainly be held that, the Petitioner is not living the same standard of life, which she was accustomed to while residing with the Respondent.

31) In the judgment of *Pravin Kumar Jain V/s. Anju Jain*,⁴ the Hon'ble Supreme Court has culled out certain factors to be considered from the judgment of *Kiran Jyot Maini V/s. Anish Pramod Patel*⁵ and *Rajnesh V/s. Neha* (supra), the following factors are to be looked into while granting maintenance to the dependent wife :

- [i] Status of the parties, social and financial.
- [ii] Reasonable needs of the wife and the dependent children.
- [iii] Individual qualifications and employment status.

⁴ (2025) 2 SCC 227

⁵ 2024 SCC OnLine SC 1724

- [iv] Independent income or assets owned by the Applicant.
- [v] Standard of life enjoyed by the wife in the matrimonial home.
- [vi] Any employment sacrifices made for the family responsibilities.
- [vii] Reasonable litigation costs for a non-working wife.
- [viii] Financial capacity of the husband, his income, maintenance obligations, and liabilities.

Applying the aforesaid factors, in the present case, the Petitioner-Wife is undoubtedly entitled for the maintenance from the Respondent for maintaining herself according to the standard of her husband.

32) Assuming that the Respondent-Husband requires 50% of the income for his own expenses and maintenance and he is required to pay total of Rs. 30,000/- to both of his children, the Petitioner would be certainly entitled to a maintenance of Rs. 20,000/- per month.

33) The Judge of the Family Court has committed a jurisdictional error by arriving at a conclusion that, since the Petitioner is able to save money and invest it in the FDs, she must be in a sound financial position to maintain herself. Therefore, she is not entitled to maintenance. The reasoning

given by the Judge of the Family Court is contrary to the judgments of the Hon'ble Supreme Court as referred above, which clearly lays down that, even if the wife is earning or has an earning capacity, it cannot act as a bar for the wife to receive maintenance from husband, in order to maintain herself with the same lifestyle to which she was accustomed to during her matrimonial home.

34) In view of the aforementioned observations the impugned order dated 11.09.2023, passed by the Judge, Family Court No.4, Pune, is quashed to the extent of refusing to grant maintenance to the present Petitioner. It is hereby directed that, the Respondent shall make payment of Rs. 20,000/- per month to the Petitioner-Wife during the pendency of final decision of the Petition. With the aforementioned observations, Writ Petition is disposed off.

[MANJUSHA DESHPANDE, J.]