

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13660 OF 2024

Mrs. Pooja Shishir Verma

Age : 46 years, Occu.: Housewife

Presently residing at :-

K-16/9, 2nd Floor, DLF Phase-II,
Qutab Enclave, Gurgaon Haryana.

Lastly Resided in Matrimony at :-

1702, B-Wing, Shiv Shrushti Apartment,
Above Hyundai Showroom, Link Road,
Mahavir Nagar, Kandivali-West,
Mumbai-400 067.

...Petitioner

Versus

Mr. Shishir Randhir Verma

Age :- 48 years, Occu.:- Service

Presently working at

Tata AIA Life Insurance,
14th Floor, Tower A,
Peninsula Business Park,
Senapati Bapat Marg,
Lower Parel, Mumbai 400013
and residing at 906, Tower 2,
Acme Oasis, Lokhandwala Township,
Alina Nagar, Kandivali East,
Mumbai 400101.

...Respondent

Mr. Abhaysingh A. Shinde, for the Petitioner.
Mr. Advait Helekar, for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 23RD SEPTEMBER 2025.
PRONOUNCED ON : 17TH OCTOBER 2025.

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith, matter is taken up for final disposal with the consent of parties.
2. This Writ Petition raises challenge to the order dated 09th June 2023, passed by the Judge Family Court, Bandra, Mumbai at Exhibit 6 in Petition No.A-22/2015, refusing to grant interim maintenance to the Petitioner.
3. By invoking Article 227 of the Constitution of India, the Petitioner is challenging the legality, validity and propriety of the impugned order seeking further directions to grant her interim maintenance during the pendency of the Divorce proceedings before the Family Court at Bandra.

4. The facts of the case in nutshell as pleaded by the Petitioner in the memo of the Writ Petition are that, the marriage between the Petitioner and the Respondent was solemnized on 25th April 2002 at New Delhi. There are no children born out of the wedlock. The Respondent and his family treated the Petitioner with cruelty and subjected her to mental, emotional and economic harassment. The parties lastly resided together in Kandivali, Mumbai, and have been residing separately since 30th July 2014. Since her abandonment by the Respondent, the Petitioner is residing with her mother. The Petitioner has filed Divorce proceedings under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short **“the HMA, 1955”**) on 28th November 2014, i.e., after 12 years of marriage. After filing of Divorce Petition, she filed Application for interim maintenance under Section 24 of the HMA, 1955 on 28th November 2014.

5. In the Interim Application, the Petitioner had adopted the averments in the Petition for Divorce in order to avoid repetition. It is her case that after her separation, she was unemployed and jobless, due to which she had to rely on the income of her retired father. She did not have any accommodation. On the other hand,

the Respondent was leading a lavish lifestyle with all the material comforts. He is employed with Tata AIA Life Insurance in capacity of Vice President, with a very good package.

6. In response to her Application for interim maintenance, the Respondent has filed his reply on 06th November 2019, denying all the adverse contentions. The Respondent has alleged that the Petitioner was residing with her paramour, namely, Avinash Ramnath. They had a rented flat at Juhu Versova Link Road Andheri West, Mumbai.

7. On the basis of the pleadings of the parties, the Application for interim maintenance has been decided by the Judge, Family Court, vide order dated 09th June 2023. The claim of the Petitioner for interim maintenance under Section 24 of the HMA, 1955 has been rejected by the Family Court. The Petitioner has, therefore, approached this Court, challenging the order of rejection.

8. Mr. Shinde, learned Counsel appearing for the Petitioner submits that, the Application for interim maintenance has been rejected by the Judge, Family Court, primarily on two grounds firstly, on the ground that, the Petitioner has suppressed the

material transaction of Rs. 17 lakhs made by her, by crediting the amount in the account of Mr. Avinash Ramnath just before filing affidavit of assets and liabilities. Secondly on the ground that, she is living in adultery by residing with Mr. Avinash Ramnath during subsistence of their marriage. It is submitted that though it is alleged by the Respondent that, till 13th January 2016, she had a bank balance of Rs. 17,25,676/-, which is suppressed by her. But, the fact remains that he too has not produced all the bank statements. He has selectively produced a few random bank statements, which is not in accordance with the decision of the Hon'ble Supreme Court in the case of *Rajnish V/s. Neha & Another¹*, requiring the parties to file affidavit of assets and liabilities.

9. It is submitted that, the Respondent has taken a plea that, he earns salary of Rs. 1.5 lakhs per month after deductions. From his salary, he has to make domestic expenses, and also maintain his mother, who is a cancer patient. But he has suppressed the fact that, she has passed away prior to the decision of this Application.

1 (2021) 2 SCC 324

Therefore, the Respondent has suppressed necessary facts and misled the Family Court.

10. It is further submitted that, in fact in the affidavit, the Petitioner has shown her income received by her from the rent towards cellphone tower, erected on their joint property owned by them. She has categorically stated in her affidavit that, she was sharing an equal amount of rent of the tower with the Respondent. She has clearly mentioned that she had borrowed an amount of Rs. 32,80,000/- and out of which she has repaid an amount of Rs. 18,50,000/- at the time of filing the affidavit. Therefore, she has not suppressed anything about transfer of amount of Rs. 17 lakhs to the account of Avinash Ramnath.

11. In her rejoinder affidavit, she has categorically stated that Avinash Ramnath is not her paramour, but her guardian. Her father had requested Mr. Avinash Ramnath to take care of her expenses, which would be taken care of later. Mr. Avinash Ramnath had borne all the expenses while renting the flat, which does not mean that, there was an illicit relationship between him and the Petitioner. It is submitted that, maintenance cannot be denied to

the Petitioner on the ground of mere allegations of adultery. Such allegations are required to be proved by leading cogent evidence. When Avinash Ramnath lost his job as a result of complaint filed by the Respondent, he had asked for refund of the amount spent by him, while renting the flat and even thereafter. He had demanded the said amount vide e-mail dated 13th July 2019, which shows that, the Petitioner owed him Rs. 32,80,330/- out of which she had paid Rs. 1,50,000/- by borrowing it from her mother and Rs. 17 lakhs is transferred from her own account. She could pay the aforementioned amount to Mr. Avinash Ramnath from her savings, which had accrued from the rent of tower till 2016, and also the remuneration received by her from her work assignments.

It is submitted that, in fact, in her affidavit of assets and liabilities filed on 8th February 2021, she has categorically mentioned that she owed Rs.32,80,000/- towards rent and other charges. Giving further bifurcation, it is stated that from the amount of Rs.32,80,000/- she has paid Rs.18,50,000/- and the rest was due. It is clearly mentioned that she is unemployed and still awaiting maintenance, as a result of which, she had to borrow

huge amounts. Even the amount due towards the fees of lawyers was shown to be Rs.6,00,000/- lakhs, among which she had paid Rs.3,50,000/- till the date of filing the affidavit. Hence, there is no question of any concealment of material facts by the Petitioner. By linking the transfer of amount in account of Avinash Ramnath, to establish that, she is having illicit relationship with him, is a ploy on the part of the Respondent to tarnish her image and prejudice the mind of this Court, as has been done by him before the Family Court.

12. It is submitted that the Petitioner has nowhere denied that she is qualified and was gainfully employed for a short duration in various organizations before marriage, and even after marriage. She has resigned at the instance of the Respondent. Admittedly, she had a short stint in films and television series, which started in 2008 and ended in 2011. After that, she is unemployed, and does not have any source of income which can be gathered from her affidavit of assets and liabilities. Hence, the finding of the Judge, Family Court, that there is an ample evidence on record that the Petitioner had other sources of income apart from carrier and as an actress, is not supported by any evidence, but it is made placing

reliance on the photographs produced by the Respondent, therefore, such observations are erroneous.

13. It is further submitted that the Judge, Family Court has not considered, whether the Petitioner was having any source of income and was capable of maintaining herself at the time of passing of impugned order in 2023. On the contrary, it is observed that the application will have to be decided on the basis of the conditions prevailing in 2014, that is the year in which the Petitioner had filed the application for interim maintenance. Since the application was kept pending and the proceedings are not yet decided, the Judge, Family Court, has committed an error by relying upon the conditions that were prevailing in 2014. Even today she is unemployed and does not have any regular source of income. On the other hand, the Respondent is a vice president of reputed company with a very good income which can be seen from his affidavit of assets and liabilities.

14. The Court has not appreciated the lifestyle enjoyed by the Respondent during their marriage, which reflected in his bank statements. The Petitioner is entitled to be maintained according to

the standard, enjoyed by her during their cohabitation. After taking into consideration the affidavit of assets and liabilities filed by the Respondent, Judge, Family Court has observed that the Respondent is a man of means having sufficient income, yet the relief of granting interim maintenance has been denied to the Petitioner. The income of the Respondent as a vice president of a reputed company with salary of Rs.3.5 lakhs plus per month, surely entitles the Petitioner for maintenance and legal expenses during the pendency of proceedings between the parties.

15. Per contra, Mr. Advait Helekar, learned Counsel appearing for the Respondent, opposes the interim application contending that, in fact, the Petitioner had abandoned the Respondent to live with Mr. Avinash Ramnath. The Petitioner had left their home in July 2014 and started living with Mr Avinash Ramnath from 21st August 2014, therefore, the plea of the Petitioner that she has no place to reside is unfounded and totally false. Mr. Avinash Ramnath had leased a flat where they have resided together. In the documents submitted for lease of that flat, the police verification form filled in by Mr. Avinash Ramnath, describes the nature of relationship with the Petitioner as his wife. Hence, the contention

of the Petitioner that she is residing with her mother since 30th July 2014, is totally false.

16. It is submitted that the Petitioner has intentionally omitted to attach the bank statement to the income affidavit, which shows transaction of Rs.17 lakhs, transferred to the account of Mr Avinash Ramnath, which was made prior to the filing of the affidavit of assets and liabilities. It is thus evident that, with sole intention of suppression the transaction of a huge amount made in favour of Mr. Avinash Ramnath, has not been disclosed by the Petitioner. In fact, he had demonstrated before the Family Court that the Petitioner had an illustrious carrier in the film and television industry, she has acted in an English movie, Bollywood movie, as well as Hindi TV shows, which had a very good TRP rating. Apart from that, she has also appeared in various advertisements. The very fact that, after their separation in 2014 till the passing of the order in 2023, the Petitioner has survived without any financial assistance from him, proves that the Petitioner is earning sufficiently for her sustenance.

17. According to the Respondent, though it is alleged that he has not disclosed his expenses, even the Petitioner has failed to discharge the same burden by not disclosing from whom did she obtain the loan of Rs.32,80,000/-. She has also not given the break up of her necessary expenses, which can be discerned from the affidavit of assets and liabilities, filed by the Petitioner before the Family Court. The Family Court has rightly taken into consideration the affidavit of assets and liabilities, filed by the respective parties while passing the impugned order. There is nothing erroneous or arbitrary in the order passed by the Judge, Family Court. As such, the order passed by the Family Court, does not deserve any interference.

18. I have heard the respective counsel for the parties and perused the order impugned and documents placed on record. Though there are various documents placed on record, however this Petition has been filed under Article 227 of the Constitution of India. The scope for appreciation of the order as well as documents on record are limited only to the documents filed by the parties before the Family Court. Upon perusal of the impugned order it is evident that, the application filed by the Petitioner under Section

24 of the HMA, 1955 for interim maintenance, has been rejected by the Judge, Family Court No. 4, Mumbai, on two grounds. Firstly, on the ground of concealment of material facts, more particularly, details of transfer of huge amount of Rs.17 lakhs to the account of Mr. Avinash Ramnath, while filing of affidavit of assets and liabilities. Secondly, on the ground that there is sufficient material placed on record to conclude that, the Petitioner has transgressed her moral limits of marital obligation, by residing with her alleged paramour. So far as the second ground regarding commission of adultery and bigamy is concerned, the order passed by the Judge, Family Court becomes unsustainable at the threshold for the reason that, this application has been filed by invoking Section 24 of the HMA, 1955, which reads thus:

***“24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable.*”**

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]”

19. From bare perusal of Section 24 of HMA, it is evident that, there is no bar, against a spouse living in adultery, to receive maintenance. In a similar provision under Section 125 of the Cr.P.C., there is a clear bar, under Section 125(4) of the Cr.P.C., which disentitles a wife from receiving the interim maintenance, if she is living in adultery. Even otherwise, a serious allegation like adultery is required to be proved by a person alleging it, by leading cogent evidence supported by sufficient material. Only upon leading evidence, the adultery is capable of being proved.

20. So far as the scope of Section 24 of the HMA, 1955 is concerned, it is merely an interim arrangement provided under the law, during the pendency of matrimonial proceedings between the parties, to ensure sustenance of a spouse who is without sufficient source of income. If the other spouse has sufficient income he has to provide support to the applicant. Therefore, the two necessary ingredients, for the grant of interim maintenance are that the

person who makes an application does not have sufficient income to sustain him during the pendency of the proceedings, i.e, of day-to-day life, as well as legal expenses. The other necessary ingredient is that the non-Applicant spouse has a sufficient source of income to provide for the spouse making such an application.

21. This Court, in *Bijal w/o Parag Dave V/s. Parag Labhashankar Dave*², had an occasion to deal with the relevant considerations while dealing with a claim of maintenance under Section 24 of the HMA, 1955. This Court has made the following observations:

“It is in order to obviate such a hardship that the Legislature thought it fit to make a provision in the Act for maintenance pendente lite and expenses of the proceedings from the spouse who has means to pay the same, if the other has no means. If that be the purpose of the Legislature in enacting this provision, it appears that the question whether the spouse claiming relief under this section is guilty of any marital misconduct or offence would not be relevant for the purpose of directing payment. It is presumed that the proceeding which is initiated under the Act would be for divorce, judicial separation or other matters based on certain allegations with regard to the misconduct or marital offences committed by the other spouse. Now if these allegations were to be gone into at the time of deciding as to whether the applicant, under section 24 of the Act are intended to be summary in nature and it would not be appropriate at that stage to decide if the spouse making the application under that section is or is not entitled to the said payment because

2 1999(2) Mh.L.J. 276

of the misconduct or commission of marital offence by him or her. No doubt, it is entirely in the discretion of the Court to make or not to make an order under the said section. But that discretion has to be exercised by it on the requirements laid in that section itself and if that section does not prohibit the Court from directing payment of maintenance and expenses on the ground of misconduct, it would not be in keeping with the purpose of the section to refuse to do so merely in exercise of the discretion vested in the Court under that section."

22. It is also observed that a consideration which does not flow from the statutory provision, if taken into account while exercising discretion, such discretion cannot be said to have been exercised in accordance with law..

23. In view of the above judicial pronouncement and considering the scope of Section 24 of the HMA, 1955, undoubtedly the ground of adultery or misconduct by the wife, as held by the Judge, Family Court, becomes unsustainable.

24. So far as the second ground about the concealment of the transfer of Rs. 17 lakhs by the Petitioner from her account to the account of her alleged paramour is concerned, the Petitioner has not annexed the Bank details with the Writ Petition. Though copy of affidavit of assets and liabilities is filed, it does not disclose any

source of income. When the Respondent has filed the statement of account, and details of of the Movies & TV Serials in which the Petitioner has acted from 2009 to 2014, the Petitioner has accepted it, in her rejoinder affidavit. The affidavit of assets and liabilities filed by the Petitioner does not contain the details of income of the Petitioner. The details of all the 5 accounts as claimed by the Respondent are not given by the Petitioner.

25. The Petitioner has annexed the copy of e-mail sent to her Advocate, forwarding the e-mail dated 20.09.2019 received by her from Mr. Avinash Ramnath, demanding from her the amount due towards him. This explanation has been offered by the Petitioner for the first time in this Writ Petition. The Petitioner relies on those e-mails for offering her explanation for the transfer of Rs. 17 lakhs to the account of Mr. Avinash Ramnath. The Judge, Family Court, had no occasion to apply his mind to the explanation offered by the Petitioner. As a result, the Judge, Family Court, has passed an order holding that, the Petitioner has concealed fact of transfer of Rs. 17 lakhs, therefore, she is not entitled for equitable relief. Such observation has been recorded by the Family Court, since it did have the benefit of going through the e-mails and apply its mind.

26. As observed hereinabove, the observations of the Family Court regarding adultery are not tenable to deny interim maintenance. So far as the other ground is concerned, the explanation offered by the Petitioner requires consideration.

27. Hence, in my opinion, it would be appropriate to remand the matter back to the Family Court, which is the competent Court, to reconsider the Application of the Petitioner on the issue of concealment of transfer of Rs. 17 lakhs by granting opportunity to the Petitioner to place on record the relevant e-mails received from Mr. Avinash Ramnath, demanding his money back, for passing fresh orders.

28. The Petitioner has not given the details of her income from Movies and TV Shows in her affidavit of assets and liabilities, which she admits in her rejoinder. She has also filed ITRs' for the years 2015-16, 2016-17, 2018-19 and 2019-20, therefore, in view thereof the parties shall file fresh affidavit of their assets and liabilities without any concealment and suppression as provided in the Judgment of *Rajnesh* (supra) within a period of 4 weeks from the date of this order.

29. This Court is aware that there is already huge delay in deciding the interim Application since the Application was filed on 28th November 2014, and decided on 9th June 2023. Considering that Divorce proceedings are still pending, it would be appropriate to direct the Judge, Family Court, to pass appropriate order after taking into consideration, the fresh material placed on record, within a period of 8 weeks after filing of documents by the parties. The Judge, Family Court, is further requested to make an endeavour to decide the Divorce proceedings as early as possible.

As a result, the impugned order dated 09th June 2023, is quashed and set aside and the Judge, Family Court, is directed to reconsider the Application of the Petitioner afresh within a period of 8 weeks, after placing on record the relevant e-mails by the Petitioner, and fresh affidavits of assets and liabilities of the respective parties, and pass appropriate orders.

30. Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)