

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16182 OF 2024

Mr. Bhairavkumar Surajmal Jain,

Age-37 years, Occupation-Tax Professional,
R/at-Flat No.1203, Khimji Nagar CHS SRA,
Bhattipada Road, Bhandup (W), Mumbai-78

...Petitioner

Versus

Neeta Mithalal Jain

Age-40 years, Occu.-Fashion Designer,
R/at-B/14, Sapt Sindhu Society, Road No.2,
Chembur Station Road, Chembur (E),
Mumbai-400071

...Respondent

Mr. Ranbir Shekhawat i/b. Mr. Raj Legal, for the Petitioner.

Mr. Surendra Jodhavat, for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 20th NOVEMBER 2025

PRONOUNCED ON : 4th DECEMBER 2025

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith and heard finally with the consent of the parties.

2. The impugned order dated 28.03.2024, passed by the Judge, Family Court No.3, Mumbai, is under challenge in the present Writ Petition. The impugned order is passed below Exhibit 10 on an Interim Application No.100 of 2021 in Petition No. A-121 of 2021, under Section 24 of the Hindu Marriage Act, 1955 (“HMA”), granting interim maintenance of Rs. 15,000/- per month to the Respondent from the date of filing of application till the decision of the main Petition.

3. The Petitioner is the husband of the Respondent, who has filed proceedings for Divorce under Section 13(1)(i-a) and 13(1)(i-b) of the HMA, 1955, on the ground of cruelty. According to the Petitioner, their marriage was solemnized on 22.02.2016 at Pali, Rajasthan. There is no issue born out of the said wedlock. It is alleged by the Petitioner that, he was given an understanding that, Respondent is a law graduate, but after marriage, he came to know that, she is a fashion designer by profession. Therefore, according to him, since beginning of their marriage, the Respondent and her family members have been lying to him. There used to be frequent quarrels between the Petitioner and Respondent on petty issues. The Respondent used to rake up petty issues and quarrel with the

Petitioner. With the passage of time, the Respondent became more and more aggressive and violent. Though he made every possible attempt to be patient with the Respondent, his patience reached the limit of tolerance, hence, he was constrained to file Petition for Divorce on the grounds of cruelty.

4. Upon receipt of the summons, the Respondent filed her Written Statement and denied the allegations made by the Petitioner. During the pendency of the HMA, the Respondent has filed an Interim Application under section 24 of the HMA, claiming that she is a housewife without any source of income, whereas the Petitioner is earning Rs. 1,50,000/ per month and leading a luxurious life. On this background, she claimed Rs. 75,000 per month towards maintenance during the pendency of Hindu Marriage Petition.

5. The Interim Application was contested by the Petitioner. Both the parties have filed their affidavit of Assets and Liabilities and based on the documents placed on record, the Judge Family, Court, passed an order granting interim maintenance of Rs.

15,000/ per month from the date of the application till its disposal vide order dated 28.03.2024.

6. Mr. Ranbir Shekhawat, learned Advocate for the Petitioner submits that, the impugned order is passed by the Judge, Family Court, without taking into consideration the contents of Affidavit of Assets and Liabilities filed by the respective parties. According to him, although the Respondent has claimed that, he is earning Rs. 1,50,000/- per month, it needs to be appreciated that, he is an Accountant by profession, with a private practice, he needs to maintain an Establishment, hence, after deducting all the office expenses, hardly an amount of Rs. 20,000/- per month is saved. He does not even have a residence of his own, and is residing with his parents in a small flat, which has been allotted to his mother under the SRA Scheme. He further submits that, from his income, he is maintaining his parents and an aged grandmother. All of them being senior citizens are suffering from several ailments, their medical needs and expenses are required to be borne by the Petitioner.

7. The learned Advocate for the Petitioner has drawn my attention to the title clause of the written statement and the Interim Application for maintenance filed by the Respondent, wherein her occupation is shown as fashion designer. Hence, according to him, his claim that she is a fashion designer and has an income of Rs. 24,000/- is supported by her own documents.

He further relies on the ITRs of the Respondent for the A.Y. 2017-18, which reflects her gross income of 2,83,698/- to contend that, payment of Income Tax Returns (“**ITRs**”) itself is indicative of the fact that the Respondent has a source of income. He further relies on the statement of account of the Respondent, of the Bharat Co-operative Bank Ltd.(Mumbai) to support his claim that, there are various entries of sizeable amounts deposited in the account of Respondent.

8. It is his contention that not only the entries of deposit in the bank statement, but even the fixed deposit in the name of the Respondent dated 08.10.2016 and 14.06.2017 of an amount of Rs. 14,000/- and 50,000/- are indicative of the fact that, the

Respondent does have a source of income and she has suppressed her actual income.

9. Relying upon his own Affidavit of Assets and Liabilities, he contends that, he has shown his monthly expenses to the extent of Rs. 20,000 and his income is of Rs. 21,223/- which is why, he does not have any spare amount left to pay the Respondent. It is further his contention that, in the application, the Respondent has claimed an inflated amount by attributing an income of Rs. 1,50,000/- to the Petitioner. Hence, according to him, the Judge, Family Court, has committed an error while passing the impugned order by granting maintenance of Rs. 15,000/- to the Respondent.

10. The learned Advocate Mr. Surendra Jodhavat for the Respondent, while controverting the claims of the Petitioner submits that, so far as the occupation of the Respondent is concerned, though it is claimed by the Petitioner that, she is a fashion designer and in the title clause of the 'Written Statement' as well as 'Interim Application', she herself has shown her occupation as fashion designer. According to him, in the title clause of the Marriage Petition, the Petitioner has shown her as a fashion

designer and the same has been continued in both the documents mechanically, which is an inadvertent mistake, however, he has drawn my attention to the averments made in the 'Written Statement' to contend that, there is a categorical denial by the Respondent that, during their separation, she is doing work as a 'fashion designer' and has an income of Rs. 22,000/- per month.

11. As regards the ITRs, she has already stated in her Written Statement that, the Petitioner has filed her ITR purportedly for HUF purpose. The ITR of the year 2017-18 relied upon by the Petitioner are prepared by him, and pertains exactly to the period after their marriage. It is the only ITR paid in her name, after that she has never paid any ITR.

12. It is also submitted that, the reliance placed by the Petitioner on her FDs and her bank statement is totally misplaced for the reason that her bank account as well as her FDs are in the joint name with her sister Bhavika Jain. Therefore, it cannot be assumed that, the amount belongs to her alone.

13. The learned Advocate for the Respondent has further drawn my attention to the particulars of the amounts in the bank statement to submit that the major deposits in that bank account are made by Mithalal Natmal Jain and Madhubala Mithalal Jain, who are the mother and father of the Respondent. The major deposit reflects their name, which cannot be relied to claim that Respondent is earning as a fashion designer, hence she does not need any maintenance.

14. According to the Respondent, she does not have any source of income. She is not doing any work as fashion designer. She is maintained by her parents. She is also residing along with her parents. She is the legally wedded wife of the Petitioner. Hence, it is the moral and legal duty of the Petitioner as per section 24 of the HMA, 1955, to maintain her during the pendency of the Hindu Marriage Petition.

15. As far as the reliance placed by the Petitioner on his ITRs is concerned, it is the contention of the Advocate for the Respondent that, the Petitioner, being an accountant by profession, is an expert in the field of Accounts. Hence, he knows the intricacies of

disclosing only relevant income and accordingly, making adjustments for making payment of taxes. It is thus his contention that, though the Applicant has claimed Rs. 75,000/-, as interim maintenance, without taking into account, the profession of the petitioner the Judge, Family Court, has awarded a very meager amount. Hence, the order passed by the Family Court does not deserve any interference.

16. I have perused the order and after hearing the parties, a very short question that arises, is that whether the order granting maintenance of Rs. 15,000/- per month to the Respondent deserves any interference.

17. The Judge, Family Court, has taken into account the rival claims made by the respective parties in their application, as well as the Affidavit of Assets and Liabilities filed by them. Admittedly, the Petitioner herein is an Chartered Accountant by profession. He has relied on the ITRs for the year 2019-20, showing his income of Rs. 2,01,289/-. Rs. 79,520/- for the AY 2021. Rs. 80,900/- for AY 2021. These amounts reflected in the ITRs have been compared by the Judge, Family Court with the account statement of Bank of

Maharashtra filed for the period 05.01.2019 to 07.1.2023 and also of SBI and ICICI Banks for the period from 01.01.2019 to 30.01.2023 and 12.10.2020 to 31.01.2023, respectively to come to the conclusion that, the Petitioner has meticulously and skillfully diversified his funds. Additionally, there are various transactions, which have been marked and claimed to be the salary of employees of the Petitioner. Thus, the Judge, Family Court, has come to the conclusion that, it is unbelievable that, a person who employees staff and makes payment of salary to them would draw only an income of Rs. 21,000/-. Though it is claimed by the petitioner that the amounts credited in his account are credited by his clients in order to facilitate payment of ITRs, hence, so many entries of large amounts are reflected in his account, it has not been believed by the Judge, Family Court. On the contrary, he has drawn an inference that, the Petitioner, being an expert in the field of accounts, has diversified his funds to evade legal liabilities.

18. Though there might be some substance in the claim of the Petitioner that, some amounts are deposited in his account so as to facilitate the payment of tax for his clients, however, all the huge amounts reflected in his account cannot be said to be the deposits

made for making the payment of tax. It is, therefore, unbelievable that, a Chartered Accountant like the Petitioner, with an Establishment of a few paid employees, would draw an income of Rs. 21,000/- per month. It is well-settled that ITRs are not necessarily an accurate guide to the real income of a party embroiled in matrimonial litigation and that the Family Court must determine the real income on a holistic assessment of the material before it. In the case of ***Kiran Tomar & Ors. vs. State of Uttar Pradesh & Anr.***¹, the Supreme Court emphasised this principle and observed as follows:

“10. On the first aspect, it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together. The two children are aged 17 and 15 years, respectively, and their needs have to be duly met.”

The Judge, Family Court, has, therefore, rightly drawn the inference about the income of the Petitioner. Thus, the conclusion that the Petitioner must be drawing an income of Rs. 50,000/- to 60,000/- per month, cannot be faulted with. While entertaining an

¹2022 SCC OnLine SC 1539

Interim Application, it is always permissible for the Courts to pass such orders by drawing inferences on the basis of the materials available, since interim orders are passed only on the basis of the pleadings of the parties.

19. The Judge, Family Court, has taken a balanced view, after taking into account various documents relied by the parties, which is evident from the fact that, though the Respondent has claimed an amount of Rs. 75,000/- per month towards maintenance and legal expenses, it was found to be inflated, more so, on the background of Rs. 38,000/- per month claimed to be her monthly expenses. The Judge, Family Court, has taken a very pragmatic view of the matter by refusing to take into account the rent of Rs.10,000/- claimed by the Respondent, since the Respondent is residing with her parents. Even the expenses of Rs.5,000/- shown for cosmetics has been discarded by Judge, Family Court, to arrive at a just and a reasonable amount for the monthly expenditure. The Judge, Family Court, has also taken into account the short duration and co-habitation of the parties while determining the quantum. Only after having regard to all the relevant aspects, the Judge, Family Court, has rightly come to the conclusion that

Rs. 15,000/- per month would be the reasonable amount of maintenance admissible to the Respondents, based on the basis of estimated income of Rs. 50,000/- to 60,000/- of the Petitioner, which is a very reasonable amount for a single person to survive, who is residing with parents.

20. The Judge, Family Court, has passed a reasoned order, taking all the necessary aspects into account, which does not deserve any interference, more so, considering the limited scope of interference in the order passed by the trial court in its jurisdiction of this Court under Article 227 of the Constitution of India, I do not find any case for interference made out by the Petitioner. As such, the Writ Petition, being devoid of merits, deserves to be dismissed.

21. Rule is discharged.

(MANJUSHA DESHPANDE, J.)