

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

WRIT PETITION NO.18106 OF 2024

Pradip Vithoba Raut Age : 42 years, Occu.: Self Employed, R/at.Sri Sai Shiv Shahi SRA No.3, Room No.1001, Sadanand Tandel Marg, Prabhadevi, Mumbai 400 025.	}	 Petitioner
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Versus

Priti Pradip Raut Age – 40 years, Occu.: Service, R/at.Raowadi, Gopi Tank Road, Mahim, Mumbai 400 016.	}	 Respondent
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Ms.C. Bocarro, Advocate for the Petitioner.

Mrs.Saroj N. Jadhav, Advocate for Respondent (Appointed through Legal Aid).

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CORAM : MANJUSHA DESHPANDE, J.

DATED : 07.07.2025.

JUDGMENT:

1 The Petitioner-husband challenges the order dated 04.06.2024, passed by the Principal Judge, Family Court, Bandra, Mumbai. The Petitioner-husband is challenging the order of maintenance granted in favour of Respondent-wife at the rate of Rs.15,000/- per month to be paid by him from the date of Application till the disposal of main Petition. The

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Petitioner-husband has filed divorce Petition in the Family Court, Bandra, Mumbai, alleging desertion and cruelty attributable to the Respondent-wife and therefore, seeking decree of divorce under Section 13(1)(a)(b) of the Hindu Marriage Act, 1955. According to the Petitioner-husband, he and the Respondent-wife were married on 12.10.2018. There is no issue from the marriage. It is second marriage of both the parties. The Petitioner-husband claims that the Respondent-wife barely resided with him for 20 days after the marriage. Therefore, he filed the Divorce Petition in the Family Court, Bandra, Mumbai.

2. Pending the Divorce Petition, the Respondent-wife has filed an application for interim maintenance. In the application for interim maintenance, the Petitioner-husband and Respondent-wife have filed their affidavit of assets and liabilities. The Petitioner-husband has opposed the prayer made by the Respondent-wife. The Family Court, Bandra, Mumbai, has passed order on 04.06.2024 directing the present Petitioner-husband to pay Rs.15,000/- per month towards maintenance to the Respondent-wife.

3. The learned Advocate for the Petitioner-husband contends that the impugned order violates established law and principles of natural justice. It is submitted that after framing of issues, the trial has already commenced. Therefore, it was not appropriate to grant application of the Respondent-wife at such a belated stage, more particularly, in view of the fact that the Respondent-wife has gainfully employed since long.

4. The learned Advocate has pointed out the affidavit of assets and liabilities filed by the Respondent-wife in the Family Court, Bandra. In her affidavit, she has shown her monthly expenses to be Rs.40,000/-, when her actual income disclosed by her is Rs.15,000/-, per month. According to her own disclosure in the affidavit she has disclosed that she is employed in a private establishment in the name Belle Vision Private Limited. It is her contention that she is sufficiently earning for her sustenance. She herself has stated that she is earning Rs.15,000/- per month and she is also residing with her parents, therefore, the Judge, Family Court, Bandra, Mumbai, is not justified in granting maintenance to the wife who is already earning and who has barely resided with the Petitioner husband for 20 days. She has further relied on the observations, which

were made by the Judge, Family Court, Bandra, Mumbai, wherein in it is observed that in application the Respondent-wife has mentioned her salary as Rs.5,000/-; per month, in the affidavit she has stated as Rs.15,000/-; per month, whereas during the arguments her salary was stated to be Rs.17,000/-, per month. Considering the inconsistency in the figures mentioned by the Respondent-wife, in her application, in affidavit etc., the evidence led by the Respondent-wife does not inspire confidence.

5. The learned advocate for the Petitioner-husband submits that in response to the Application filed by the Respondent-wife, the Petitioner-husband has filed reply to the interim application. The Petitioner-husband has categorically taken the stand that, the affidavit of assets and liabilities filed in the Court are contrary to the pleadings in the Application.

6. The Respondent-wife has not filed her salary slip and made a statement without proof. Since she admits she is working and, she is a self sufficient woman who does not require maintenance for sustenance. In contrast, the Petitioner-husband has a job on a cruise that lasts only 6 to 7 months each

year. He works only half the year, remains idle for the other half year without a steady income.

7. The Petitioner-husband also denies being highly educated, holding a good position, and earning Rs.2,00,000/- per month. Considering that he is employed only for 6 to 7 months, the income which is disclosed by the Petitioner-husband is required to be considered proportionately for each month instead of relying on the figure of 900 USD, as disclosed by him.

8. It is the contention of learned Advocate that though the Judge, Family Court, Bandra, Mumbai, has recorded in the order that he is working only for 6 to 7 months in a year, however, while passing the order it does not seem to have been taken into account resulting into the order impugned. Therefore, she submits that the order impugned deserves to be quashed and set aside.

9. The Advocate Mrs.Jadhav appearing for the Respondent-wife has strongly opposed the prayer made by the Petitioner-husband. It is her contention that though she has claimed in the application that she is earning Rs.5,000/- per month, she has

disclosed in her affidavit of assets and liabilities that she is earning Rs.15,000/- per month. It is the contention of the Respondent-wife that she is residing with her parents in a small tenement alongwith her brother, and his family. The room where her family resides is approximately 10 x 10 ft. In fact, her brother is not able to pay the rent from his salary and he has asked the Respondent to move out of the house of her parents. Her parents are old and need to be looked after.

10. According to her, she was compelled to reside in her parental home since she was neglected by the Petitioner-husband. The Respondent-wife was treated by the Petitioner-husband with immense cruelty, and he has failed to provide her the basic day to day needs. If she loses her job, she would struggle to sustain herself. As against that, the Petitioner-husband is working on a cruise and is holding a good position and earning approximately Rs.2,00,000/- per month. Though he has stated that he has responsibility of his parents, it is not true. His father receives a pension, and his family owns substantial assets. Whereas, the Respondent-wife is not able to live normal life. She is causing great inconvenience to her parents, who need their own space. On the contrary, the

Petitioner-husband, is working as Bartender on the Cruise and earning handsome salary. Hence, he can very well be directed to pay the maintenance to the Respondent-wife from the salary which he receives.

11. It would be apposite to refer to the observations of the Hon'ble Supreme Court in the case of **Chaturbhuj V. Sitabai**¹, wherein it is held by the Hon'ble Supreme Court, more particularly paragraph 8, which reads thus:

“8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the 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 in the way she was used to in the place of her husband. In Bhagwan V. Kamla Devi (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.”

The same view is further followed in the case of **Rajnish Vs. Neha and Anr.**². Hence, in view of the settled position of law

¹ 2008 (2) SCC 316;

² (2021) 2 SCC 324.

that even if wife is earning, her livelihood to some extent, but if her income is not sufficient and does not match the standard of she lived in her matrimonial house in such case she is entitled for maintenance.

12. I have heard the parties and also perused the impugned order. After going through the impugned order and the documents placed on record, it is evident that the Petitioner-husband is a Bartender working on 'Carnival Cruise', and he is drawing salary of 900 USD per month for approximately 6 to 7 months, as disclosed by him. As against that, the Respondent-wife is working in a private optical store. Her salary is Rs.15,000/- per month. Even assuming it is Rs.17,000/- per month, as lastly disclosed by her, the amount of Rs. 17,000/- cannot be considered sufficient for a person to live comfortably. She is forced to stay with her parents in a crowded room. It also needs to be appreciated that the Respondent-wife has been already asked by her brother to reside somewhere else. Therefore, if she resides independently, she would need to rent a room, which would incur additional expenses. Even otherwise, the Petitioner's income is much more than the Respondent with additional income of rent received from his house, leased out by him, with no responsibility or burden on him.

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13. The Judge, Family Court, Bandra, Mumbai, has taken into consideration the documents placed on record as well as the circumstances under which the Respondent-wife is living with her parents, and has thus passed an appropriate order holding that, compared to the income of husband, Respondent-wife is not leading a lifestyle, similar to that of her husband.

14. It is settled position of law that, though the wife is living separately from her husband and if she is claiming interim maintenance, she is required to be maintained by the husband with the same standard of which she is accustomed while she was residing with him. Though it is claimed by the Petitioner-husband that Respondent-wife has stayed with him only for few days, yet the fact remains that they are married and divorce proceedings are pending between the parties. Therefore the Respondent-wife is entitled for maintenance during the pendency of proceedings. The maintenance amount is require to be roughly determined by the Judge, considering the parties' pleadings and their affidavits of assets and liabilities.

15. In the present case, the Judge, Family Court, Bandra, has

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rightly taken into consideration the income of the Petitioner-husband and the income of the Respondent-wife. Considering the considerable gap between the income of both the parties, the Judge, Family Court, Bandra, Mumbai, has rightly granted maintenance of Rs.15,000/- per month to the Respondent-wife towards maintenance. I do not find that there is any perversity or infirmity in the order passed by the Principal Judge, Family Court, Bandra, Mumbai. It is the settled position of law that the husband is bound to maintain the legally wedded wife. Even if she is earning, the law requires that husband to maintain the wife with the same standard of living which he enjoys. The wife is entitled for similar living style as that of the husband. Hence, there is no case for interference made out by the Petitioner-husband. The Writ Petition being devoid of merits is dismissed.

[MANJUSHA DESHPANDE, J.]