

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19003 OF 2024

Preti Devnani Musavi	...Petitioner
<i>Versus</i>	
Mohammed Mahmood Musavi	...Respondent

Ms. Manali Joshi i/by Mr. Manan Sanghai, Advocate for Petitioner.
Mr. Vikas Shivarkar, Advocate for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED : 15th April 2025

JUDGMENT :

1. Heard Ms. Manali Joshi, learned Counsel for the Petitioner and Mr. Vikas Shivarkar, learned Counsel for the Respondent.

2. By the present Writ Petition, filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 5th August 2024 passed by the learned Judge, Family Court No.2, Pune below Exhibit-5 in Petition No. Cri. M.A. No.51 of 2022 (pages 40-43 of the Writ Petition). By the impugned Order an interim application, bearing Exhibit-5 filed on 25th October 2018 seeking interim maintenance, has been dismissed on 5th August 2024 i.e. after a period of about 6 years on the ground that the Application has been signed only by the Advocate of the

Petitioner, not signed by the Petitioner, not supported by an Affidavit, that the Petitioner has not filed the Affidavit of disclosure of assets and liabilities and that therefore the Petitioner has concealed her income.

3. Ms. Joshi, learned Counsel for the Petitioner submitted that the reasons given by the learned Judge, Family Court are incorrect and in any case are not relevant. She submitted that the said Exhibit-5 Application has been filed on the same day on which main Petition bearing Criminal M.A. No. 51 of 2022 has been filed. The main Petition is signed and verified by the Petitioner. She submits that in paragraph 1 of the said Application bearing Exhibit-5, it is specifically stated that the contents of the said petition be treated as part and parcel of the Exhibit-5 Application. She submitted that in Exhibit 5 Application, some of the contents of the main application are merely repeated and therefore not signing Exhibit-5 Application by the Petitioner is not very relevant. She submits that before passing the impugned Order, Affidavit of disclosure of Assets and Liabilities is filed by the Petitioner and therefore, the said reason given is totally incorrect. She submitted that the Respondent has substantial income and he is maintaining

luxurious lifestyle. She submits that the Petitioner is single handedly maintaining twin daughters since 2018. She therefore submits that the reliefs sought in the Writ Petition be granted and in fact higher amount be granted as maintenance than claimed in the Exhibit-5 Application as the Application has been filed in the year 2018.

4. On the other hand, Mr. Shivarkar, learned Counsel for the Respondent submitted that the Exhibit-5 Application has been signed by the Advocate of the Petitioner and not signed and verified by the Petitioner. Therefore, the learned Judge, Family Court has rightly rejected the Exhibit-5 Application. He submitted that monthly income of the Petitioner is Rs.25,000/- per month. On the other hand, the Petitioner is earning very high income. He submits that the family of the Petitioner is very rich. He therefore submitted that the Writ Petition be dismissed. Alternative, he submitted that by setting aside the impugned Order, the matter be remanded back to the learned Judge, Family Court.

5. Before consideration of the rival contentions, it is necessary to set out certain factual aspects:-

(i) The marriage between the Petitioner and the Respondent was solemnised at Pune on 26th November 2012.

(ii) The couple has twin daughters of about 11 years (Date of birth-12th September 2014).

(iii) Both Petitioner and Respondent started staying separate since about February 2018. The twin daughters are staying with the Petitioner-mother since February 2018.

(iv) The D.V. Petition was filed on 25th October 2018 and Exhibit-5 Application *inter alia* seeking following reliefs is also filed on 25th October 2018:-

“2. The Applicant may be granted interim alimony of:

A. Rs.1,50,000 per month for the Applicant.

B. Rs.20,000 per child per month.

C. All education expenses including fees, private tuitions, conveyance, sports activities, extra-curriculum activities etc. Education Fees to be paid on actuals.

D. All expenses towards vaccinations of both the children.

E. Medical insurance for the Applicant and the children.

F. Four wheeler car for the Applicant and the children.

G. 3 bedroom flat in or around Wanowrie/ Salunke Vihar/ Sopan Baug on rent till the final decision of the petition.”

(v) The said Exhibit-5 Application seeking maintenance filed on 25th October 2018 was dismissed by the impugned Order dated 5th August 2024.

6. Inso far as far as the reasoning given by the learned Family Court, Pune to the effect that the Application is only signed by the Advocate of the Petitioner and not signed and verified by the Petitioner, Ms. Joshi, learned Counsel for the Petitioner points out paragraph 1 of the said Application bearing Exhibit-5. In the said paragraph, it is specifically stated that the Petitioner has filed a Petition under Sections 12, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (“**D.V. Act**”) and the said petition be treated as part and parcel of the

Application. In the said Petition No. Criminal M.A. 51 of 2022 (**D.V. Petition**) *inter alia*, the Applicant has sought interim alimony of Rs.1,50,000/- per month for the Applicant and of Rs.20,000/- per month per child and in addition to the same also all education expenses including fees, private tuition, conveyance, sports activities, extra-curriculum activities, other expenses etc. are sought. Admittedly the contents of said D.V. Petition are signed and verified by the Petitioner. The Application bearing Exhibit 5 and said Criminal M.A. No. 51 of 2022 (D.V. Petition) are filed on the same day i.e. on 25th October 2018. The contents of Application bearing Exhibit 5 are *inter alia* also stated in said Criminal M.A. No.51 of 2022. To reject the said maintenance application filed in the year 2018 in the year 2024 i.e. after a period of about 6 years on the said technical ground is totally unjust. The learned Judge could have directed the Petitioner to comply with the said technical objections. Therefore, the said Application bearing Exhibit 5 could not have been rejected on the ground that the same is only signed by the learned Advocate appearing for the Applicant and not by the Petitioner and the contents are not supported by the Affidavit. In any case, there is no prejudice to the Respondent as contents of Exhibit 5 Application is part of said Criminal M.A. No.51 of 2022

which is signed and verified by the Petitioner. It is also required to be noted that as mentioned in the impugned Order, the Respondent has filed Say to the said Exhibit-5 Application and therefore, it is clear that no prejudice whatsoever has been caused to the Respondent.

7. The other reason given in the impugned Order is that the Petitioner has not filed affidavit of disclosure of assets and liabilities. With reference to the said aspect, it is required to be noted that the Exhibit 5-Application has been filed on 25th October 2018. The judgment in the case of **Rajnesh Vs. Neha**¹ requiring both the Petitioner and the Respondent to submit Affidavit of Assets and Liabilities has been delivered by the Supreme Court on 4th November 2020. In any case factually, affidavit of assets and liabilities of the Petitioner has been filed on 7th August 2023. Thus, much before passing of the impugned Order dated 5th August 2024, the Petitioner has filed Affidavit dated 7th August 2023 of Assets and Liabilities of the Petitioner. Thus, the rejection of said Exhibit-5 Application on that ground is totally perverse. On the assumption that the Petitioner has not filed Affidavit of Assets and

¹ (2021) 2 Supreme Court Cases 324

Liabilities, the learned Judge has observed that the Petitioner has not placed true facts before the Court.

8. As the learned Judge, Family Court has incorrectly observed that the Petitioner has not filed Affidavit of Assets and Liabilities and on the technical grounds, rejected the Application by setting aside the impugned Order, the Exhibit-5 Application should have been remanded back to the learned Judge, Family Court. However, in this case the Application seeking maintenance filed in the year 2018 is decided in the year 2024 and the Writ Petition is being heard in the year 2025. Thus as far as twin daughters are concerned, the maintenance application is decided by this Order and as far as maintenance application for Petitioner-wife is concerned, she is granted liberty to file fresh application.

9. It is the contention of the Petitioner in her application filed under D.V. Act in paragraphs 28 to 31 as follows:-

“28. The Applicant submits that the Respondent No.1 is the partner and authorised signatory at Radiant Construction located at Radiant House, Office No.1, 2nd floor, 150 Mahatma Gandhi Road, Pune 411001, India. Annexed herewith is a copy of the MahaRERA Application Information of the said organisation. The

Respondent No.1 along with his father is running the business of land development, building and construction and have leased out several properties in and around Pune. **The Respondent No.1 is earning more than Rs.1,00,00,000 per annum from the said businesses. The Respondent No.1 is the Fitness Motivator and founder of two companies PMM Nutrition and Mohammed Musavi Fitness. The Respondent No.1 also has a YouTube Channel in the name of Mohammed Musavi Fitness, is a motivational speaker and uploads videos on his YouTube channel where he has approximately 20,000 followers. The Respondent No.1, through this YouTube channel is doing online consultancy and also is getting clients for the business of nutrition and fitness. Annexed herewith are the pictures of the Respondent No. 1's nutrition and fitness.**

29. The Respondent No.1 Is using Chrysler, Mercedes for his personal use. The Respondents' family has many imported cars like 2 Mercedes, Chrysler, Lancer, Mitsubishi Outlander, Hyundai Civic. Annexed herewith are the pictures of the cars. The Respondent No.1 uses clothing and accessories of brands ranging from Louis Vuitton, TAG, Ernessa, Jimmy Choo, etc. costing per shirt more than Rs.25,000. The Respondent No.1 has a Vacheron Constantin Limited Edition diamond watch costing approximately Rs.50,00,000 and has 5 to 7 Rolex Limited Edition watches which cost minimum 5 to 7 lakh rupees each. Annexed herewith is the picture of the watch. The Respondent No.1 and 2 are currently staying in a luxurious flat of approximately 8,000 sq.ft. with the best of furniture, paintings, a gymnasium, artefacts, crockery, etc.

30. They eat Imported brands' foods and use imported cosmetics and medicines to keep up to their heavily lavish lifestyle. The Applicant, during her stay with the Respondent No.1 had 5 helpers for their daily chores like looking after the home, cooking, car-keeping, driving, baby sitting, etc. Every few months, the Applicant and Respondents No.1 travel to various places around the world and stay at the most luxurious resorts, visit spas, eat at luxurious restaurants and enjoy the best of nightlife. The Applicant submits that the Respondent No.1 had gifted an Audi car for her personal use and Etios for the children.

31. The Applicant submits that **after the separation the Applicant is required to stay at her mother's flat on the mercy of her mother and brother.** The Respondent No.1 has taken the keys of all the vehicles used by the Applicant and the children and hence, the Applicant is required to travel by bus or auto rickshaw. **The Applicant submits that the Applicant is unable to work or take any permanent job as she is required to take care of the kids.** The Applicant submits that the Respondent No.1 is not paying any amounts to the Applicant or the children for their day to day needs, education, transportation, medicines, vaccinations, etc. and hence, the Applicant is praying for the Interim alimony as well as permanent alimony for herself and her children from Respondent No.1.”

(emphasis supplied)

10. The Petitioner in the Affidavit of Assets and Liabilities gave following information in Column-J as regards income of the Respondent.

“J. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse

1. Educational and professional qualifications of the other spouse: I state that the Respondent has completed his B.com from Ness Wadia College, Pune University.

2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse.

I state that the Respondent is a partner with his father in a construction and real estate company at Radiant House, 2nd Floor, MG Road, Pulgate Police Chowky, Camp, Pune-411 001. I state that the partnership company also holds multiple land parcels across Pune. I state that the Respondent is earning an amount of Rs.10,00,000/- per month from his construction and real estate businesses. I state that Respondent is a known celebrity fitness trainer with multiple high-profile clients from whom he charges Rs.50,000/- to Rs.1,00,000/- per month/ per client for training sessions. I state that Respondent own a fitness brand company in the

business of selling Whey Protein and earns an amount of Rs. 2,00,000/- per month. I state that the Respondent is earning about Rs.1,00,00,000/- per annum. I state that apart from this the Respondent is having various investments with various schemes and earning interests on the same. I state that the Respondent is owner of luxurious cars. I state that the Respondent is owner of flats at Wanowrie, Salunke Vihar and Padamji Park. I state that the Respondent is having a company in abroad and earning income from the same.

(Emphasis added)

11. Thus, the contention raised is that the present Respondent is the partner and authorised signatory of Radiant Constructions. The Respondent alongwith his father is running the said business of land development and construction and that the Respondent is earning more than 1.00 Crore per annum from the said business. It is further stated that the Respondent No.1 is a Fitness Motivator and founder of two Companies namely PMM Nutrition and Mohammed Musavi Fitness. The Respondent No.1 also has a YouTube channel in the name of Mohammed Musavi Fitness and has approximately 20,000 followers. It is further stated that Respondent is a known celebrity fitness trainer with multiple high-profile clients from whom he charges Rs.50,000/- to Rs.1,00,000/-

per month/ per client for training sessions. The Respondent owns a fitness brand company in the business of selling “Whey Protein” and earns an amount of Rs. 2,00,000/- per month. The Respondent is earning about Rs.1,00,00,000/- per annum.

12. It is the main contention of learned Counsel for the Respondent No.1 that the Petitioner is the owner of five Firms and that the Respondent is earning only Rs.25,000/- per month. It is required to be noted as clarified earlier that this Court is not considering the maintenance application of the wife and the maintenance application is being considered only for twin daughters.

13. In this behalf, it is required to be noted that admittedly there are twin daughters out of the said wedlock. The date of birth of twin daughters is 12th September 2014. Thus, the daughters are presently about 11 years. It is admitted position that the D.V. proceedings are filed on 25th October 2018 and the said application seeking maintenance was also filed on 25th October 2018. It is also admitted position that till date not a single penny has been paid by the Respondent-father even for maintenance of twin daughters. It

is also admitted position that the twin daughters are single handedly maintained by the Petitioner since 2018. It is settled legal position that if the wife is earning, then it is the responsibility of both the parents to maintain the children.

14. As far as the contention raised in the D.V. proceedings that the Respondent is the partner and authorised signatory at Radiant Construction with his father, it is stated in the detailed Say dated 2nd April 2019 filed by the Respondent that he was earlier partner with the father in the said business, however, he has resigned from the same and therefore, he has nothing to do with the said business. It is further stated that now the Respondent is struggling in his business ventures and he is not even earning more than Rs.50,000/- to 1,00,000/- per annum approximately. The relevant part of the Say of the Respondent is paragraph 5, which reads as under :

“5. Respondents state that content of paragraph three with respect to Respondent No.1 being a partner and authorised signatory at Radiant Construction is not true and correct. Rest of the content is false and hence denied by him. Respondent No.1 specifically denies that he is earning Rs. 1,00,00,000/- (Rupees One Crore Only) per annum. **It is most humbly**

submitted that Respondent No.1 was a partner and has resigned from the company and hence, has nothing to do with the business of his father. Respondent No. 1 states that he is still struggling in his business ventures and is currently earning not more than Rs. 50,000/- (Rupees Fifty Thousand Only) to Rs. 1,00,000/- (Rupees One Lac Only) per annum approximately. Respondent No.1 states that due to financial constrain he is currently residing with his mother since he cannot afford separate accommodation. However, it may be relevant to point out that due to insistence of the Applicant, the Respondent No.1 had to take separate accommodation on rent during June, 2012 to February, 2018 and the rent used to be mostly paid by the father of Respondent No.1.”

15. In view of the above contention raised by the Respondent, it is required to be noted that the Petitioner has produced alongwith compilation of documents, details of a property owned *inter alia* by the Respondent admeasuring about 24,000 sq. mtrs. having value of Rs.6.00 Crores in the year 2013. The photograph of the Respondent produced on page-71, according to the Petitioner is taken at a 5 Star Hotel in Dubai. The photograph alongwith message on page-78 shows that the Respondent has posted a picture alongwith message few month back on social media platform i.e. Instagram, stating that he has bought a leather jacket worth Rs.4,00,000/- for his girlfriend. Ms. Joshi, learned Counsel

for the Petitioner is right in contending that such lifestyle cannot be maintained if the Respondent is earning Rs.25,000/- per month. Thus, this is clear that the Respondent who is having substantial income and inspite of that has not paid even a single penny for the maintenance of the daughters at least since the year 2018. It is also very clear that the Petitioner has not disclosed true facts before the Court.

16. The Petitioner has filed Affidavit-in-Reply dated 7th April 2025 in this Writ Petition. However, it is required to be noted that the Respondent has not mentioned his income. In the entire Affidavit, he has not disclosed about the income, which he is getting per month. Thus, it is clear that the Respondent has not come with clean hands in the Court. The Supreme Court in the case of **S.P. Chengalvaraya Naidu Vs. Jagannath**² has held that the litigant, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. The said principle is also applicable to the Respondent as he has not placed the true position before this Court and therefore adverse inference is required to be drawn against the Respondent.

² (1994) 1 SCC 1

17. It is required to be noted that the Respondent who is earning substantially has not paid a single penny to the twin daughters. It is required to be noted that the Application which has been filed by the Petitioner seeking maintenance to herself and to the twin daughters is filed on 25th October 2018. The said application is decided by the impugned Order dated 5th August 2024 by the learned Judge, Family Court and dismissed on technical grounds and totally perverse grounds as set out hereinabove. Therefore, it is necessary that in the interest of justice, the prayers made in the Application on 25th October 2018 are required to be moulded in the facts and circumstances of the case and in the interest of justice and kindness.

18. Accordingly, the Writ Petition is disposed of by passing following operative order:-

(A) The impugned Order dated 5th August 2024 passed by the learned Judge, Family Court No.2, Pune below Exhibit-5 in Petition Criminal M.A. No. 51 of 2022 is quashed and set aside. The said Application bearing Exhibit-5 is allowed by passing the following directions:

(I) The Respondent shall pay maintenance of Rs.20,000/- per child per month from 25th October 2018 till 25th October 2021.

(II) The Respondent shall pay maintenance of Rs.50,000/- per child per month from October 2021 till October 2024.

(III) The Respondent shall pay amount of Rs.75,000/- per child per month from November 2024 till the disposal of said Petition No. Criminal M.A. 51 of 2022.

(B) The maintenance as per the above direction be paid per month on or before 10th day of each succeeding month. First such payment shall be made on or before 10th May 2025. As far as the arrears of maintenance from 25th October 2018 till 31st March 2025 the same shall be paid within a period of 3 months.

(C) The Respondent is directed to deposit above payments as per the above schedule in the account of the Petitioner. Learned Advocate of the Petitioner to communicate details of the Account number of the Petitioner to the learned Advocate appearing for the Respondent on or before 5th May 2025.

(D) As far as the Petitioner-wife is concerned, the wife is granted liberty to file fresh application before the Family Court, Pune seeking maintenance. If such application is filed, the learned Family Court, Pune to decide the same on its own merits.

19. Accordingly, the Writ Petition is disposed of in above terms with cost of Rs.1,00,000/- to be paid by the Respondent to the Petitioner within eight weeks from today.

(MADHAV J. JAMDAR, J.)

Note: This order is modified as per order dated 30th April 2025.