

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

WRIT PETITION NO.4126 OF 2025

Vaibhav Diigambar Parab

.... Petitioner

Versus

Bhagyashree Vaibhav Parab

.... Respondent

.....

Mr.Swapnil Bangar a/w. Mr.Ashwin Tripathi, Advocate for the
Petitioner.

Mr.Satya Shettigar and Sairaj Kank, Advocate for Respondent.

.....

CORAM : MANJUSHA DESHPANDE, J.

DATED : 10.06.2025

JUDGMENT :

1 Rule. Rule made returnable forthwith.

2 The Petitioner husband is challenging the order passed in Interim Application No.188 of 2023 in Petition No.A-1722 of 2022, passed by the Family Court at Bandra, below Exhibit 18 dated 06.12.2024.

3 The Petitioner herein has filed proceedings for divorce against Respondent-wife under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act, 1955. According to the Petitioner they were married on 26.04.2016 and were blessed with a baby boy on 13.07.2017. There were quarrels and disagreements between the

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parties. The Petitioner has made allegations of extra marital affair against the Respondent. As a result of discord between the parties, the Petitioner has filed divorce proceedings, which are pending before the Family Court.

4 During the pendency of the divorce proceedings, parties were referred to the Marriage Counselor. During the counseling, ad-hoc Consent Terms were agreed upon between the parties in which Petitioner had undertaken to continue to pay the school fees, school van fees, tuition fess and pay for other extra curricular activities of their son Prem. It was also agreed that the Petitioner can have overnight access of their son on every Saturday and Sunday and also 50% of overnight access during the summer, Diwali and Ganpati vacations. The Consent Terms were executed between the parties before the Family Court on 13.03.2023. As such there was an interim arrangement made for access of the Petitioner. The Respondent herein has filed her written statement in the divorce proceeding on 05.10.2023.

5 The Respondent, on 08.12.2023 has filed an application for interim maintenance and expenses of proceedings, under Section 24 of the Hindu Marriage Act, 1955. In her application, she has claimed an amount of Rs.35,000/- per month towards her maintenance and Rs.15,000/- per month for the maintenance and education expenses of their minor son.

6 The application filed by the Respondent was opposed by the Petitioner by filing reply to the application.

After hearing the parties, the Judge, Family Court, Bandra, Mumbai has passed an order dated 06.12.2024, granting an amount of Rs.15,000/-, per month towards maintenance for the Respondent and Rs.10,000/- per month towards the maintenance of the minor child from the date of application i.e. from 08.12.2023, till the disposal of the Petition. Additionally, the Petitioner is also directed, to make payment of school expenses of the minor child, in the same school in which he is presently pursuing his education. It is this order which is impugned in the present Writ Petition.

7 The learned advocate for the Petitioner Mr.Bangar submits that, the application of the Respondent seeking maintenance and expenses is not maintainable in view of the Consent Terms, which were arrived at between the parties, and are part of the record. The Consent Terms, provide that the Petitioner has undertaken to bear the education expenses of their son, and he undertakes to continue to bear the same. While drawing the Consent Terms, Respondent has not claimed any maintenance for herself thereby waiving her right to claim maintenance. Hence, now she is precluded from raising any such claim for maintenance, by way of separate application.

8 Apart from this objection, it is the contention of the learned

advocate for the Petitioner that, the Respondent is earning a good salary, no one is dependent upon her. The Petitioner is taking care of all the expenses of their minor child. Therefore, Respondent is not eligible for grant of any maintenance as claimed by the Respondent.

The Petitioner relies on the affidavit of assets and liabilities filed by the parties.

9 As per the affidavit of the Respondent, she is working with one M/s.Korodia Clinic, SRL Diagnostic having franchisee of Agilus Diagnostics Ltd. with a monthly salary of Rs.17,605/-. It is claimed by her that the Petitioner is working in a vehicle finance company i.e. Shriram Finance for more than 12 years and he is drawing salary of Rs.70,000/- per month. He is also having franchisee of SRL Diagnostic, for which he earns Rs.6,00,000/- per month. It is further claimed that the Petitioner is running 13 medical stores and earns Rs.8,00,000/- per month. In view of the income earned by the Petitioner, the Respondent is claiming that she is entitled for maintenance of Rs.35,000/- for herself and Rs.15,000/- per month for their minor son Prem.

10 The claim of the Respondent about his monthly income of Rs.14,00,000/- is totally denied by the Petitioner. It is contended by learned advocate for the Petitioner that in fact he has started SRL Lab for his wife, from which she is earning income of more than

Rs.35,000/- per month. It is his contention that he has already left the job of Shriram Finance in the year 2020. He further submits that he has huge liabilities, he is paying EMI of Rs.30,495/- towards home loan, Rs.34,196/- towards auto loan and Rs.13,887/- towards bike loan.

11 The Petitioner contends that the Judge of Family Court, Bandra, while allowing the Application has relied on the affidavit of assets and liabilities filed by the parties, and his bank statements. According to him certain entries are relied upon by the Respondent to assert that he is earning handsomely from his business of SRL Diagnostic as well as medical stores. Hence, the entries of huge amounts are reflected in his bank statements. However, just below those entries of huge amounts, there are certain entries wherein amounts are again debited in favour of one Pradeep Jain. Therefore, it is clear that whatever amount are received by him are again diverted in the name of Mr.Pradeep Jain, who owns the business. Hence, those cannot be relied upon to claim that he is earning from his business of Agilus Diagnostics Blood Collection Center, Bhandup.

12 According to the Petitioner, the affidavit of assets and liabilities filed by the Respondent-wife discloses that she is qualified and is employed with Agilus Diagnostics Ltd., as a Phlebotomist, and she has disclosed her net salary to be Rs.17,605/- per month. Considering that she is already earning a good salary, and she has no dependent on

her, the Petitioner is already taking care of all the expenses of the minor child, the claim made by the Respondent towards her own maintenance does not deserve consideration.

13 Per contra, opposing the prayer of the Petitioner, the advocate for the Respondent Mr.Shettigar submits that the Consent Terms filed before the Family Court, Bandra, Mumbai, were by way of an interim arrangements, which is titled as, "Consent terms for ad-hoc maintenance and interim access". Therefore the Respondent is not precluded from filing an application for interim maintenance for herself and for her child during the pendency of the proceedings.

14 Even otherwise, there was no provision made in the said Consent Terms making any arrangements for maintenance to be provided to the Respondent, during the pendency of the proceedings. Therefore, the Respondent was at liberty to file an application for grant of interim maintenance. After filing of ad-hoc Consent Terms on 13.03.2023, which were filed during the counseling session before the Family Court, Bandra, Mumbai, the Respondent has filed written statement negating all the adverse averments made by the Petitioner. The written statement was filed on 05.10.2023.

15 It is submitted that considering the meager salary received by the Respondent, she was constrained to file an application for interim maintenance for the survival of herself and their son.

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Accordingly, she has filed an application seeking interim maintenance on 08.12.2023. It is her contention that the allegations in the divorce petition filed by the Petitioner is false and frivolous. The Petitioner has doubted her chastity. The Respondent was harassed by the Petitioner and his mother. It is her contention that the Petitioner is earning a handsome income from his service in Shriram Finance Company as well as the franchisee of SRL Diagnostic, which comes to around Rs.6,00,000/- from two franchisees and also the 13 medical stores owned by him. According to her, the estimated earning of the Petitioner is about 14,70,000/- per month. In view of the huge difference in their earnings, she alongwith their son is entitled for interim maintenance of Rs.35,000/- and 15,000/- per month, respectively.

In support of her contention, she has relied on the affidavit in lieu of assets and liabilities filed by the Petitioner wherein he has disclosed that his total monthly expenses are to the extent of Rs.42,800/- per month and he owns two properties at Thane as well as Kasheli village, Bhiwandi. Hence, according to her in view of the income of the Petitioner, which is not disputed, the order passed by the Principal Judge, Family Court, Bandra, Mumbai dated 06.12.2024, granting maintenance of Rs.15,000/- and Rs.10,000/-, respectively to her and her son does not need any interference.

16 I have heard the respective parties and I have also gone through the documents placed on record with the assistance of the respective parties. So far as the objection regarding the right of the Respondent to file the application for interim maintenance is concerned, the very title of the Consent Terms discloses that it was 'Ad-hoc maintenance and interim access'. Hence, the right of the Respondent cannot be said to be taken away, due to the Consent Terms, which were arrived at between the parties during the counseling process.

17 In the application filed by Respondent it is categorically averred in paragraph 6 of the Application that, the Petitioner is earning Rs.70,000/- per month from his employment, and also earns Rs.6,00,000/- per month from two franchisees and Rs.8,00,000/- per month from the 13 medical shops, totaling to Rs.14,70,000/- per month. The averments made by the Respondent in the application in paragraph 6 has not been denied by the Petitioner in the reply filed by him to the application of the Respondent for interim maintenance. The only reply to the contents of paragraph 6 of the Respondent's application is that the Petitioner is paying the maintenance to the child including his educational expenses as per the Consent Terms agreed upon between the Petitioner and the Respondent, and he is ready and willing to continue to pay the maintenance to his son and

that Respondent has filed the application only with an intention to grab money from the Petitioner.

18 As far as her averments regarding the income of the Petitioner are concerned, those are not denied by the Respondent in his say. Therefore, those have gone untraversed.

19 I have also gone through the affidavit of assets and liabilities filed by the respective parties. The Judge of the Family Court has rightly observed that the Petitioner affirms that he earns Rs.5,00,000/- per annum from the business of Agilus Diagnostics Blood Collection Center, Bhandup. The Bank statements which are placed on record for the period from 01.02.2024 to 27.07.2024 discloses several cash credit entries. Though the Petitioner claims that immediately after the cash credit entries of various large amounts, immediately entries of debit made in favour of Mr.Pradeep Jain of Krishna Medicos are found. The said debit entries were made on the same day from the petitioner's account. Merely on the basis of some entries in favour of Mr.Pradeep Jain, relief cannot be denied to the Respondent. There are various other entries of large amounts, after which there is no debit made in anybody's favour. After going through the Bank statements, it is clear that the Petitioner is a man of means and earns substantial amount through various sources.

20 The case of the Petitioner is primarily based on the fact that the
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Respondent-wife is employed and earns decent monthly salary. Admittedly, the wife has disclosed her monthly income in the affidavit filed by her reflecting her assets and liabilities. However, the ground of source of income available to wife, is no more available to husband for refusing maintenance, in wake of the judgment of the Hon'ble Supreme Court. The Hon'ble Supreme Court has taken a view that merely because wife is earning, maintenance cannot be denied to her. In ***Rajnish Vs. Neha and Anr.***¹, the Apex Court has taken into consideration various provisions in the different enactments providing maintenance to the wife. Paragraphs 82 and 83 of the said judgment is reproduced hereunder, which read thus:

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration: (1) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (f) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable. and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

In paragraph no.90 of the very judgment, the Hon'ble Apex Court, has in no uncertain terms held that, if wife is earning it cannot

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operate as bar from being awarded maintenance by husband. While making above observations, the view taken by this Court is approved. This Court in the case of ***Sanjay Damodar Kale Vs. Kalyani Sanjay Kale***², has taken a view that neither the potential to earn, nor the actual earning of wife howsoever is meager is sufficient to deny claim of maintenance to wife.

Paragraph 34 of the Judgment in the case of ***Sanjay Damodar Kale Vs. Kalyani Sanjay Kale (Supra)***, which is reproduced as under:

“34. However, the fact that the wife carries on some business and earns some money is not the end of the matter. Neither the mere potential to earn nor the actual earning, howsoever meager it may be, is sufficient to deny the claim of maintenance. The learned Judge, Family Court was justified in placing reliance on the judgment of the Supreme Court in the case of Sunita Kachwa Vs. Anil Kachwa, wherein it was observed that, ‘the learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.’”

21 In view of the consistent view that is taken by the High Courts as well as the Hon'ble Supreme Court, that even if the wife has the potential to earn or is earning to some extent, she is entitled to maintenance in accordance with the lifestyle she enjoyed in the matrimonial home, commensurate with her husband's means. Sustenance does not mean and cannot be allowed to mean mere survival. Applying the principles laid down in various judicial pronouncements to the present case, merely because the Respondent is earning some paltry amount, she cannot be denied the maintenance, in order to maintain herself and their son, with the same standard of lifestyle, which she enjoyed in their matrimonial home while residing with husband. It is also held that, if he is able-bodied, and could not avoid his obligation, except on any legally permissible grounds mentioned in the statute.

22 In today's day of inflation, an amount Rs.17,605/-, cannot be said to be sufficient for even fulfilling the bare minimum necessities of life. Considering the income of the present Petitioner, the Respondent alongwith their son deserves the maintenance, as granted by the Family Court, Bandra, Mumbai.

23 The Respondent is earning a meager salary of Rs.17,605/-. There is a huge disparity in the income of Petitioner and Respondent. The obligation of the husband to provide maintenance stands on a higher pedestal than the wife. In view thereof, Petitioner has failed to

make out a case for interference in the impugned order. Hence, the order passed by the Principal Judge, Family Court, Bandra, Mumbai, does not deserve any interference. Hence, the Writ Petition is dismissed.

24 When this Court was not inclined to interfere with the orders passed by the Family Court, Mumbai, Bandra, an earnest request was made by the learned counsel for the Petitioner that in case the Court is not inclined to interfere with the impugned order, the proceedings pending before the Family Court, Bandra, Mumbai, may be expedited. In view of the request made by the learned counsel for the Petitioner, and the assurance given by the Advocate for the Respondent to co-operate in early disposal of the proceedings, the Principal Judge, Family Court, Bandra, Mumbai, is requested to hear and dispose of the proceeding pending before the Family Court, Bandra, Mumbai, as early as possible preferably within a period of six months from receipt of the order.

(MANJUSHA DESHPANDE, J.)