



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5368 OF 2025

Shilpa Amol Sherkhane, Aged about 40 yrs, Occ: Govt.
Servant, R/o C/o Jija Pramod Shende, Plot No.85,
Shriram Nagar, Uday Nagar Chowk, Nagpur.

PETITIONER

VERSUS

Amol Sambhaji Sherkhane, Aged about 41 years,
Occ: Service, R/o 6, Near Housing Board Office,
Manewada Square, Ring Road, Nagpur.

RESPONDENT

Shri J.M. Gandhi, counsel for the petitioner.
Shri M.D. Janabandhu, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 13, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. This petition highlights the issue of a husband's entitlement to claim interim maintenance from his wife despite he being well qualified and capable of securing employment. The petitioner wife has sought indulgence of this Court under Article 227 of the Constitution of India by way of instant petition challenging the order dated 17.07.2025 passed by the Family Court, Nagpur directing her to pay maintenance *pendente lite* of Rs.5,000/- per month along with litigation expenses of Rs.25,000/-.

3. The petition arises out of a matrimonial discord amongst the husband and wife who are contesting the matrimonial litigations of divorce petition, domestic violence proceedings and dispute about custody of their children. The challenge in the instant petition is to an order passed by the Family Court

on an application under Section 24 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955') at Exhibit 15 in the proceedings for divorce which is registered as A-508 of 2020 filed by the husband. The petitioner and respondent were married on 19.02.2012 according to Hindu rites and customs. Disputes arose in the matrimonial life and in the year 2020, the husband filed the petition seeking dissolution of marriage alleging cruelty by the wife, in which both parties have levelled several allegations about cruelty and harassment against each other.

4. In this petition, the husband filed an application for maintenance *pendante lite* of Rs.15,000/- per month along with Rs.7,500/- for rent and litigation costs of Rs.25,000/- from the wife. The wife strongly opposed the application by categorically stating that the husband is an able bodied and well qualified person having worked as Engineer with Indian railways and is in a position to maintain himself by securing a suitable employment. It was pointed out that the husband was engaged in several acts of harassment to the wife and their children and the application seeking maintenance is an instance of such harassment. After considering the contentions of the parties, the learned Judge, Family Court, Nagpur allowed the application by order dated 17.07.2025 directing the wife to pay interim maintenance of Rs.5,000/- per month from the date of the application till final disposal of the petition on or before 10th day of every month along with litigation expenses of Rs.25,000/-. Feeling aggrieved by this order, the wife has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

5. Shri J.M. Gandhi, learned counsel for the petitioner-wife strenuously submitted that the approach adopted by the Family Court in ignoring the

purport of the provision of Section 24 of the Act of 1955 is perverse. He submitted that the husband has failed to demonstrate that he was unable to maintain himself and there existed no grounds, much less any exceptional circumstances establishing that he was in need of interim maintenance and litigation expenses. He submitted that the husband is a well qualified person who had worked as an Assistant Engineer-Group-A Officer in the Indian Railways from 2006 to 2019 and although terminated on account of misconduct, is an able bodied person who is able to maintain himself. He submitted that wife although a government servant is maintaining herself and their two children born out of the wedlock and is residing in a rented premises with the support of her parents. It is therefore submitted that even after considering the fact that the wife is employed, in the peculiar circumstances of this case husband cannot claim any interim maintenance and litigation expenses in the proceedings which he himself has initiated leveling baseless allegations against wife. He invited attention towards the conduct of the husband in filing several proceedings against the wife depicting harassment on various counts. He therefore submitted that the application for interim maintenance is filed by the husband only with an intention to cause further harassment and mental agony. He thus submitted that the Family Court has failed to appreciate the true purpose behind the concept of interim maintenance and has misdirected itself in allowing the application.

6. Per contra, Shri M.D. Janbandhu, counsel for the respondent-husband vehemently opposed the petition. He submitted that undisputedly the husband is unemployed at this stage and the wife is working as a Medical Officer in Public Health Department and earning salary of Rs.1,20,000/- per month. He

submitted that the wife is leading a lavish lifestyle and she has also purchased a new car and therefore she is legally and morally bound to maintain her husband who has lost his job. He asserted that the husband is entitled to live according to the same standard of living as that of the wife and submitted that since the provisions of Section 24 allows the financially weaker spouse to seek interim maintenance, he supported the impugned order and pressed for dismissal of the petition.

7. Rival contentions thus fall for my consideration.

8. A perusal of the instant petition and reply dated 01.10.2025 filed by the husband shows that the husband and wife are contesting several cases on the basis of allegations against each other, even with respect to certain criminal offences. The focus in the instant petition is entitlement of the husband to claim interim maintenance and accordingly the controversy is dealt with from this perspective.

9. Pertinent to note, the husband has claimed himself 'unable to maintain' and only because wife is earning, has sought for interim maintenance. There is no dispute that the wife is employed as a Medical Officer and she is maintaining herself and the two children born out of the wedlock. She claims to be residing in a rented premises which is not disputed by the husband. Crucial to note that the husband is also well-qualified person who has worked as 'Assistant Engineer – Group A Officer' in Central Railways from 2006 to 2019. The husband has himself stated on affidavit that he was terminated on the charge of misconduct, following a departmental enquiry and the punishment of removal from service is challenged in the proceedings before the Central Administrative Tribunal.

10. Thus, in the wake of aforesaid facts, it has to be seen as to whether the husband can claim that he is unable to maintain himself only because he is not having any job at present. Having regard to the scheme of Section 24 of the Act, either of the spouse with no independent source of income can claim maintenance *pendente lite*. However, in order to claim interim maintenance, a husband with sufficient qualifications and ability to earn his livelihood will also have to establish that the existing circumstances constrain him to be completely dependent on somebody for his livelihood and that he is handicapped to such an extent that he must be extended financial support to survive. An able bodied husband having sufficient qualification and experience is not expected to sit idle and depict helplessness to claim maintenance from his earning wife against whom he is fighting several cases.

11. The material placed on record indicates that the husband is an able-bodied person aged about 41 years and is fully capable of earning his livelihood. The Hon'ble Supreme Court has consistently held that an able-bodied spouse cannot be permitted to remain idle and then seek maintenance from the other spouse. It is beneficial to make reference to the judgment of the Hon'ble Supreme Court in *Shailja & Anr. Versus Khobbanna* [(2018) 12 SCC 199], wherein it was held that 'mere capable of earning' is a factor that weighs against granting maintenance. Similarly, in *Kanchan Versus Kamalendra* [AIR 1992 Bombay 493], this Court had reiterated that a person who is able-bodied and capable of earning cannot be allowed to take advantage of his own inertia (idleness).

12. The record further shows that the husband was employed with the Indian Railways as an Assistant Engineer from 2006 to 2019 and his service

came to be terminated on charges of misconduct. Any financial distress faced by him is therefore a consequence of his own actions. The law does not permit a litigant to benefit from his own wrongful conduct. The Hon'ble Supreme Court in *Inderjit Singh Grewal Versus State of Punjab & Another* [(2011) 12 SCC 588] has held that no party can be allowed to derive advantage from his own wrongdoing. Applying this principle, a husband whose unemployment arises out of misconduct cannot claim inability to earn and shift the financial burden onto his wife.

13. Pertinently, this Court had earlier directed the husband to state on affidavit the steps taken by him for securing employment. In response, the husband has simply placed on record certain recruitment advertisements and submitted that the husband is making efforts to secure employment. I am not impressed with these submissions. The submissions in this regard clearly appear to be an eyewash. The husband has filed the application under Section 24 of the Act of 1955 only because there is a provision of law under which he can apply however, the husband has failed to show and establish any case proving his entitlement for interim maintenance from his wife.

14. It is also an undisputed fact that the husband owns a flat at Kavesar, District Thane and earns rental income from it. In *Shailja & Another* (supra), the Hon'ble Supreme Court emphasized that the existence of an independent source of income is a relevant factor in declining maintenance. Therefore, despite all these glaring factual aspects in the present case, the Family Court has given undue importance to the sole circumstance that the husband has lost his employment and straightway inferred that the wife should maintain the husband. The Family Court committed a mistake while allowing the

application for interim maintenance when there was no material placed on record to show that the husband is genuinely incapable of maintaining himself despite being able-bodied, educated and having rental income.

15. Moreover, the conduct of the husband in first filing a divorce petition and soon thereafter seeking maintenance from the wife indicates an attempt to exert pressure and cause harassment to her rather than to address any real financial need. The Supreme Court in *Rajnish Versus Neha* [(2021) 2 SCC 324], has extensively dealt with the legal position about law of maintenance considering the remedy of maintenance as a measure of social justice and laid down various guidelines. Having regard to the legal position in this regard, it must be borne in mind that maintenance application must be bona fide and not used as a means to exert pressure in matrimonial proceedings. The application for maintenance filed by the husband in the instant case, appears to fall in the latter category.

16. Considering the husband's physical capacity, educational qualifications, prior employment history, the circumstances leading to his unemployment and the fact that he has a regular rental income, he does not satisfy the legal parameters for seeking interim maintenance from a working spouse. Granting him an interim maintenance would amount to permitting misuse of the remedy. Crucial to note, the wife is shouldering the responsibilities to maintain two children while living in a rented house. Having regard to all these vital aspects, the Family Court ought to have rejected the application for grant of interim maintenance since no case was made out by him for grant of interim maintenance.

17. The petitioner has made out a case in her favour. The writ petition is hereby allowed. The order dated 17.07.2025 passed by the Family Court, Nagpur on application at Exhibit 15 is quashed and set aside. The application at Exhibit 15 filed by the husband stands rejected.

18. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE