



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11007 OF 2023

Rajkumar Amruthrao Guddadigi,

...Petitioner

*Versus*

Shilaja Rajkumar Guddadigi,

...Respondent

Mr. Dilip P. Devadiga, for Petitioner.

Mr. Vinay Kate, with Ms. Swarupa Sarate, for Respondent.

CORAM : DR. NEELA GOKHALE, J.

RESERVED ON : 2<sup>nd</sup> January 2024.PRONOUNCED ON : 4<sup>th</sup> January 2024.**JUDGMENT:**

1. **Rule.** Rule is made returnable forthwith. The Respondent has filed his affidavit in reply. By consent of the parties, the matter is taken up for final hearing.

2. The Petition challenges the quantum of interim maintenance granted by the 6<sup>th</sup> Joint Civil Judge Senior Division, Kalyan to the Respondent/wife and minor child on an application under Section 24 of the Hindu Marriage Act, 1955 (“HMA”) made by Respondent.

3. The objective of granting interim maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of their marriage and not as a punishment to the other side. There is no straight jacket formula for fixing the quantum of maintenance to be awarded but the settled legal position suggests that the amount of maintenance awarded must be reasonable and realistic and avoid either of the two extremes, i.e., it should neither be so extravagant which becomes oppressive and unbearable for the Respondent, nor should it be so meager that it drives the Applicant to penury. The Petitioner/husband claims that the quantum awarded by the learned trial Judge is unfair and does not balance equities. It is this dilemma which presents itself before this Court for consideration in the present Petition.

4. The order dated 16<sup>th</sup> June 2023 impugned by the Petitioner/husband directs him to pay an amount of Rs.15,000/- per month to his wife and Rs.10,000/- per month to his minor son from the date of filing the Application, i.e., 23<sup>rd</sup> August 2022 and Rs.3,000/- towards litigation expenses.

5. The facts giving rise to the present proceeding are that the parties were married on 26<sup>th</sup> June 2012 at Gulbarga, Karnataka as per rites and ceremonies of Hindu religion. There is one son namely Ankush, presently about 10 years of age, born of the said marriage.

There was marital discord between the parties which resulted in

some acrimony leading to the parties' separation. Admittedly, the parties are residing separately from November 2021. It is the say of the Petitioner that his wife deserted him without any justifiable reason and despite his many very efforts, he was unable to convince her to resume cohabitation. Ultimately, a Petition for divorce was filed by him under Section 13(1)(ia) of the HMA against his wife in the Court of the Civil Judge, Senior Division, Kalyan. The Respondent/wife appeared in the matter and contested the Petition by filing her written statement. She made an application under Section 24 of the HMA seeking interim maintenance to the tune of Rs.40,000/- per month each for herself and minor son Ankush. She also sought litigation expenses of Rs.50,000/-. The trial Court after hearing both sides partially allowed the Application and granted a collective Rs.25,000/- to the wife and son in addition to Rs.3,000/- as litigation expenses. It is this order that is assailed by the Petitioner/husband in the present Petition.

6. Mr. Dilip Devadiga, learned Counsel appears for Petitioner/husband. He draws to my attention the affidavit of income and expenditure of both parties which have been placed on record in the present Petition. Pointing to the personal information in his wife's affidavit, he contends that his wife is residing in the matrimonial house owned by the Petitioner/husband and, therefore, does not require any amount towards rent, as she has sought in

Clause (7) under the heading of personal information. He claims to be paying Rs.60,000/- towards EMI of the said flat. He further points to Clause (f) in her affidavit which indicates that she earns approximately Rs.10,000/- per month by way of freelancing recruitment. He also says that he himself is residing in a rented accommodation with his mother and has to pay monthly rent of Rs.6,500/-.

7. Per contra, Mr. Vinay Kate, learned Counsel for the Respondent/wife while admitting her residence in the matrimonial home, points to the salary of the Petitioner affirmed in his own affidavit which is Rs.1,02,330/- per month. The affidavit shows that he is an Assistant Manager in M/s. Astec Life Science Ltd., Mahad, M.I.D.C., Raigad and his gross salary is Rs.1,23,085/- per month. Mr. Kate points to the admission of Petitioner/husband pertaining to expenditure of Rs.5,00,000/- towards the education of minor son Ankush. The affidavit shows that the Petitioner/husband admitted to have spent Rs.1,05,000/- per year towards school fees of Ankush, Rs.52,200/- towards the school bus, books and stationery expenses, Rs.5,000/- for private tuition and other expenses of Rs.40,000/- on the child. Mr. Kate says that thus the Petitioner/husband is capable of spending Rs.5,00,000/- in one year on the education of the minor son when he was only seven years old and this itself shows the income and the status of the Petitioner/husband. He, thus, prayed

for rejection of the present Petition.

8. I have heard both counsels and have perused the documents with their assistance.

9. The clear position emanating from the affidavits, admissions and the documents comprising of bank statements of the Petitioner on record indicate that the Petitioner/husband earns approximately Rs.1,30,000/- per month, owns a car, has investments in shares, stays in rented premises and has no dependents on him save and except his wife and son. Against this, the wife is jobless, sometimes earning Rs.10,000/- from freelancing work, resides in the matrimonial home and single handedly takes care of and incurs expenditure of the minor son.

10. The perusal of the order impugned indicates that the trial Judge has taken into account all the facts necessary to be considered for fair adjudication and determination of quantum of interim maintenance. The trial Judge has applied all the settled parameters while doing so. The Petitioner/husband is a qualified Engineer and is suitably employed. His standard of living is fairly modest. The Respondent/wife is also a qualified MBA but unable to hold down a permanent job as she is single handedly looking after a ten years old. The mere fact that she is residing in the matrimonial home is not a pretext to disentitle her to a reasonable amount of maintenance. She

still needs some amount towards food, medicine, clothes and educational expenses for the child. Thus, considering the status of the parties, reasonable needs of the wife and minor son are parameters to be considered while determining the sufficiency and the reasonableness of the quantum of interim maintenance to be adjudged so that the wife is able to maintain herself and the minor son in reasonable comfort. The quantum of maintenance awarded by the trial Judge is neither oppressive nor is it unendurable for the Petitioner/husband and there is no hardship caused to him. The amount of Rs.3,000/- is also reasonable for litigation expenses and barely sufficient for her to defend herself in the divorce Petition initiated by her husband. In view of the same, no interference is required in the order impugned herein. The quantum of interim maintenance, as adjudged by the trial Court, is reasonable and does not suffer from any infirmity. The Petition is, thus, dismissed.

11. Rule is discharged. There is no order as to costs.
12. All interim reliefs granted earlier stand vacated forthwith.
13. It is made clear that the observations made in this order and the interim order shall not affect the merits of the proceedings before the trial Court.

**(DR. NEELA GOKHALE, J.)**