
(2018) 12 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 13993 Of 2016 With Civil Application No.852 Of 2017

Shri Amol Chandrakant Mahamuni

APPELLANT

Vs

Sau. Swati Amol Mahamuni

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2018) 12 BOM CK 0065

Hon'ble Judges : M. S. Sonak, J

Bench : Single Bench

Advocate : Rajendra Kumar Galanage, Megha Tembhrune

Final Decision : Dismissed

Judgement

1. Heard Mr. Rajendra Galanage, learned counsel for the Petitioner and Ms. Megha Tembhrune, legal aid counsel for the Respondent.

2. The challenge in this Petition is to the order dated 31st August, 2015 made by the learned trial Judge granting interim maintenance of Rs. 1,500/- p.m. to the Respondent-wife. Mr. Galanage states that the Petitioner is jobless and therefore not liable to pay any maintenance to the Respondent. He states that the Respondent stayed with him as his wife only for two months. He states that he had earlier married but taken divorce and therefore, the Respondent is his second wife. He states that the Respondent raised unnecessary disputes with the Petitioner and his family members. He states that the conduct of the Respondent amounts to harassment. He states that the Respondent was never respectful to the Petitioner and his family members. He states that the Petitioner's mother who is Sr. Police Inspector (Retd.) visited the Respondent's home and requested her to return to the matrimonial home. However, the Respondent not only refused to return but also made false allegation and file complaint against the Petitioner's mother. Mr. Galanage states that despite of this, the Petitioner is open for one time settlement. He states that the Petitioner has deposited Rs. 15,000/- towards the arrears of maintenance from the date the impugned order

was made. He states that the trial Judge erred in issuing a warrant against the Petitioner for recovery of arrears of maintenance. He submits that the order dated 15th February, 2017 by which such warrant was issued is also liable to set aside. He states that he has taken out Civil Application seeking for stay on the order dated 15th February, 2017. For all these reasons Mr. Galanage submits that this Petition may be allowed and the impugned orders may be quashed and set aside.

3. Ms. Tembhurne, appointed under the Legal Aid Scheme defends the impugned order on the basis of reasoning which is reflected therein. She points out that on 1st July, 2017 the Petitioner had made a statement that he will deposit the entire arrears of maintenance within one week. On the basis of such statement this Court was persuaded to grant interim relief, however, the Petitioner failed to pay the arrears of maintenance as undertaken by him. She therefore submits that the Petitioner is in fact guilty of contempt of Court and in any case, the jurisdiction under Article 227 of the Constitution should not be exercised in favour of the Petitioner. She submits that the Petitioner had suppressed the factum of his previous marriage. The Respondent stayed with the Petitioner for six months. She submits that the maintenance amount awarded is in fact a pittance. She submits that the Petitioner is in service. She submits that the Petitioner had not other responsibilities since his mother is a retired Sr. Police Inspector and drawing pension. She therefore submits that this Petition may be dismissed with costs.

4. The rival contention now fall for determination.

5. At the very outset, it is necessary to refer the order made by this Court on 1st July, 2017 which read thus:

1. Not on board. At the request of Petitioner matter is taken on board for urgent orders.

2. By this petition under Article 227 of the Constitution of India, Petitioner is challenging the order dated 31st August, 2015 passed by the 3rd Joint Civil Judge, Senior Division, Satara below Exhibit 27 and 32 in Hindu Marriage Petition No. 403 of 2014.

3. By that order the Civil Judge, Senior Division, Satara directed the Petitioner to pay sum of Rs. 1500/per month to the Respondent by way of maintenance from the date of application i.e. 6th January, 2015.

4. The learned Counsel for Petitioner submit that Respondent-wife has already filed execution proceeding. He submit that when the execution notice was issued to the Petitioner, at that time Petitioner learnt that the Respondent - wife has filed the execution proceeding for recovery of the amount as per order dated 31st August, 2015 below Exhibit 27 and 32. Hence, pending the hearing and final disposal of the Writ Petition, this Court be pleased to stay the order dated 31st August, 2015.

5. The learned Counsel for Petitioner after taking instructions from his client, who is present in Court make statement that Petitioner is ready and willing to deposit the entire arrears of maintenance charges in this Court within one week from today. The statement is accepted.

6. Considering the submission made by the learned Counsel for Petitioner that Petitioner is ready and willing to deposit entire arrears of maintenance charges in this Court within one week from today, the following order is passed.

(A) Office is directed to issue notice before admission to the Respondent returnable after six weeks.

(B) In addition to usual mode of service, Petitioner is permitted to serve Respondent by private notice along with copy of Writ Petition either by Registered Post A.D. and/or by hand delivery and file Affidavit of Service to that effect.

(C) The operation and implementation of the order dated 31st August, 2015 passed by 3rd Joint Civil Judge, Senior Division, Satara below Exhibit 27 and 32 in Hindu Marriage Petition No. 403 of 2014 is stayed till next date on condition that Petitioner to deposit entire arrears of maintenance charges in this Court within one week from today, failing which, ad- interim relief stand vacated without reference back to the Court.

(D) It is made clear that in case petitioner failed to deposit the said amount as per order dated 31st August, 2015 passed by Civil Judge Senior Division, Satara below Exhibit 27 and 32 in Hindu Marriage Petition No. 403 of 2015, Respondent is entitled to execute the order according to law.

(E) Stand over to 14th August, 2017.

6. In paragraph No. 5 of the aforesaid order dated 1st July, 2017 it is clearly recorded that the learned counsel for the Petitioner after taking instructions from his client, who is present in Court makes statement that Petitioner is ready and willing to deposit the entire arrears of maintenance charges in this Court within one week from today. This statement was accepted by this Court. Based upon this statement the interim orders were granted restraining execution of the impugned order dated 31st August, 2015 which require the Petitioner to pay maintenance.

7. The Petitioner however, failed to deposit the entire arrears of maintenance charges within one week from the date of the aforesaid order. Even assuming that the Petitioner made the deposit of Rs. 15,000/- or there abouts before the trial Court, it is obvious that this amount does not constitute the entire arrears towards the maintenance as on 1st July, 2017. In these circumstances, Ms. Megha Tembhurne, learned counsel for the Respondent is right in submitting that the Petitioner at least prima facie that the Petitioner has committed a contempt of the order dated 1st July, 2017. That apart this is also a relevant consideration to decide whether the conduct of the Petitioner entitles him to invoke the

extraordinary and equitable jurisdiction under Article 227 of Constitution.

8. In fact this Petition is liable to be dismissed on the ground of the Petitioner's aforesaid conduct itself. However, even if the conduct of the Petitioner is to be ignored for some time, this is also a fit case for dismissal on merits.

9. None of the contentions raised by the learned counsel for the Petitioner are either borne by any material on record nor can it be said that such contention are relevant for the issue of payment of interim maintenance which has been ordered by the learned trial Judge. There is material on record which indicates that the Petitioner is earning salary or other income. There is material on record that the Respondent is enable to maintain herself. There is no dispute that the Respondent is a wife of the Petitioner. In these circumstances, the learned trial Judge was entirely justified in making the impugned order and directing the Petitioner to pay the interim maintenance to the Respondent.

10. Ms. Tembhurne, in fact right in her contention that the quantum of maintenance determined by the learned trial Court is on the lower side. Now that almost over 3 years have passed since the impugned order for interim maintenance was made, liberty is granted to the Respondent to apply to the trial Court for seeking enhancement of this amount of interim maintenance, or in any case, it is high time that the Court disposes of the application for maintenance finally.

11. Suffice to note that there is no case made out to interfere with the impugned order. All the contentions now raised have been considered by the learned trial Judge and have been rightly rejected by the learned trial Judge. It is necessary to note that some of the contentions now raised in this Court do not even appear to have been raised before the learned trial Court. In any case, based upon contentions today raised, there is absolutely, no case is made out to interfere with the order dated 31st August, 2015.

12. By order dated 15th February, 2017, the learned trial Judge issued warrant against the Petitioner for enforcement for direction for payment of interim maintenance. The order records that the warrant was returned un-executed possibly because the judgment debtor is a police officer and has played a material role in creating hurdles in such execution. The learned counsel for the Petitioner points out that the Petitioner is not a police officer. Possibly the learned trial Judge was mean to say that Petitioner's mother was Sr. Police Inspector. Be that as it may since, the Petitioner is admittedly in arrears of maintenance, there is nothing wrong in issuing warrant against him. The Petitioner gave assurance to this Court that he shall deposit the arrears within one week from the order dated 1st July, 2017. However, the Petitioner, despite such assurance, did not bother to deposit the arrears of maintenance. In such a situation, there is nothing wrong in the order dated 15th February, 2017 issuing warrant against the Petitioner. In fact, it is the duty of the police officials to execute such warrant and not being influenced by any one, in case, they tried to obstruct execution of such warrant.

13. At this stage, the learned counsel for the Petitioner interrupts the dictation to point out the fact that the Respondent is also working, is not considered by the trial Court. If the impugned order dated 31st August, 2015 is perused, this point has been considered by the learned trial Judge. In any case, even assuming that the Respondent is doing some work, in order to make ends meet and to barely survive, that by itself, cannot amount to any disqualification to receive any interim maintenance. In this case, as noted earlier, the interim maintenance of only Rs. 1,500/- p.m has been awarded to the Respondent. Accordingly, there is no merit even in this contention of the learned counsel for the Petitioner.

14. Looking to the conduct of the Petitioner, it is obvious that his proposal for one time settlement is far from genuine. The proposal was possibly put forth only to secure an adjournment and further delay in payment of interim maintenance to the Respondent. Accordingly, on the basis of such proposal, it is not possible to defer the hearing in the present Petition.

15. For all the aforesaid reasons, this Petition is dismissed with cost which are assessed at Rs. 10,000/-

16. The executing Court/the learned trial Court to ensure that the Petitioner, along with the arrears of maintenance, also pays this cost of Rs. 10,000/- to the Respondent. Such cost are to be paid within four weeks from today.

17. This Court was inclined to issue notice to the Petitioner to show case as to why action under Contempt of Court Act be not initiated against him for having disobeyed the order dated 1st July, 2017. However, since the learned counsel for the Petitioner now states that the entire arrears of maintenance, up to 31st December, 2018 together with cost of Rs. 10,000/- today awarded will be positively deposited by the Petitioner before the learned trial Court, latest by 25th January, 2019, this Court refrains from issuing the proposed notice.

18. The Petitioner is directed to clear all the arrears of maintenance up to 31st December, 2018 along with other charges and costs now awarded or earlier awarded latest by 25th January, 2019. If such deposit is made, the Respondent, will have the liberty to withdraw the same unconditionally. If no deposit is made, the Respondent will have the liberty to take appropriate proceeding including proceeding for contempt against the Petitioner.

19. Though the order for issuing for arrest warrant is not interfered with, the trial Court is directed that the arrest warrant be not executed until 25th January, 2019. However, if the Petitioner, once again fails to pay or deposit, then, without prejudice to any other action, the trial Court to ensure that the orders for payment of maintenance are executed, including by way of issuing arrest warrant. The police authorities are also directed to ensure that the warrant is properly executed.

20. This Petition is therefore dismissed with cost and directions as aforesaid. Civil Application is also disposed of.

21. This Court records the appreciation for the services rendered by Ms. Megha Tembhrune who appeared under Legal Aid Scheme on behalf of the Respondent-wife.

22. All concerned to act on the basis of authenticated copy of this order.