

jud-902-wp-3553-18 and cp-459-17

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

WRIT PETITION NO. 3553 OF 2018

Mr.Prakash Kumar Singhee ...Petitioner
Versus
Ms.Amrapali Singhee ...Respondent

**WITH
CONTEMPT PETITION NO.459 OF 2017**

Ms.Amrapali Singhee ...Petitioner
Versus
Mr.Prakash Kumar Singhee ...Respondent

Mrs.Seema Sarnaik for the Petitioner in WP No.3553 of 2018 and
for the Respondent in CP No.459 of 2017.

Mr.Abhijit Sarwate for the Respondent in WP No.3553 of 2018 and
for the Petitioner in CP No.459 of 2017.

CORAM : SMT.BHARATI H. DANGRE, J.

RESERVED ON : 23rd MARCH 2018

PRONOUNCED ON : 4th MAY 2018

JUDGMENT :-

1. The present Writ Petition is filed by the petitioner-husband, challenging order passed by the Family Court, Pune below Exh.20 in Petition B. No.2/2013, thereby directing the petitioner to pay maintenance of Rs.2 lakhs to the wife under Section 20 of the Protection of Women from Domestic Violence Act, 2005 from the date of application till the decision of the petition.

2. Contempt Petition No.459 of 2017 is taken out by the wife alleging non-compliance of the said order passed by the Family Court and praying for appropriate directions to the husband to comply with the said order.

3. The brief chronology of the facts leading to the filing of present petitions is culled out below.

The petitioner and respondent were married on 11.07.1997 as per Hindu rites and Customs. At the relevant time the petitioner was living in Houston, Texas, USA and the parties resided there till 2004. Out of the said wedlock, two children were born on 15.11.1998 and 20.01.2004. At present the daughter is studying in USA and the son is staying with the wife.

The case of the petitioner-husband is that the respondent-wife lost interest in married life and she took away the children from their joint custody. The respondent-wife instituted the Petition B No.2/2013 invoking Section 34, 37(2), 38 and 39 of the Specific Relief Act before the Family Court, Pune. In the said proceedings, the respondent-wife prayed for a restrain order against the husband removing son Aryaman from the custody of the petitioner-husband and also from meeting his son Aryaman out of Pune. Exh.5 came to be filed in the said Court praying for

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temporary injunction and the Family Court-I, Pune on 24.01.2013 issued temporary injunction against husband directing not to remove child from the custody of the wife until further orders.

4. The respondent-wife preferred an application Exh-20 in the said petition under Section 20 of the Protection of Domestic Violence Act praying for monetary relief of Rs.5 lakhs per month and for reimbursement of school fees of son Aryaman to the tune of Rs.50,000/-. In the said application preferred under Section 20 of the Domestic Violence Act, the wife alleged that she is entitled for maintenance of Rs.5 lakhs per month by taking into consideration the life style to which she is accustomed to and in the backdrop of the earning capacity of the husband. The said application came to be opposed by the petitioner by filing a reply wherein it was contended that the proceedings under the Domestic Violence Act cannot be extended to a woman who earns tax free dividend of Rs.4 lakhs per annum and who has investment in her bank to fetch her interest of around 70 thousand per annum. In the said reply the petitioner-husband categorically stated that he was catering to the needs of the wife and children and always arranging for their lodging and boarding and all other miscellaneous expenses.

5. On consideration of the said application, the impugned order came to be passed by the Family Court. The Judge Family Court dealt with the objection that the application under Section 20 of the Domestic Violence Act cannot be instituted in the proceedings filed under the Specific Relief Act and the Court also recorded the submission of the petitioner that the preliminary requirement of Domestic Violence has not been proved and in such circumstances such an application cannot be entertained.

6. The impugned order proceeds on a footing that the petitioner is a President of “Shiv Vani Oil and Gas Exploration Services Limited” and draws a salary of Rs.15 lakhs per month with perks worth Rs. 5 lakh. The Court observe that the husband is in charge of the said company but he has failed to produce any documents reflecting his income, but the wife had produced on record copy of her bank statement. The Family Court would take note of the bank statement as well as Income Tax returns of the wife for the year 2013-2014, 2014-2015, 2015-2016 and 2016-2017. The Court considered the income shown as against these years and recorded a finding that the income of the wife for the year 2015-2016 is Rs.17,46,878/- whereas for the year 2016-2017 it is reflected as zero. The Court did not find favour with the

explanation tendered by the wife that her mother is joint holder of the account where huge amount has been credited and that she deals in stock broking and therefore the entries are reflected in her account. The Court recorded, a finding that the said explanation is not acceptable at all. However, taking into consideration the fact that it is responsibility of the husband to maintain his wife and children, the Court awarded maintenance to the tune of Rs.2 lakhs per month, in the backdrop of the earning capacity of the husband as per the contention of the wife.

7. In support of the petitioner learned counsel Mrs.Seema Sarnaik would submit that the Family Court has failed to take into consideration the relevant aspects of the matter and that the order passed by the Trial Court is *prima facie* erroneous. She would submit that by virtue of Section 20 of the Domestic Violence Act, while disposing of an application Sub-Section-1 of Section-12 the Magistrate may direct payment of monetary relief to meet the expenses incurred and loss suffered by the “aggrieved person” as a result of Domestic Violence. Advocate Mrs.Sarnaik would submit that the prerequisite of the grant of such a relief is an application preferred under Section-12 of the said Act by the “aggrieved person”. She would invite attention of the Court to the definite

meaning assigned to the term “aggrieved person” under Section-2(a) of the Act to mean a woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. She would also submit that the domestic violence has a specific meaning assigned to in Section-3 of the Act and would include any Act, omission or commission or conduct of the respondent as specified in Clause (a) to (d) of Section-3. She would submit that the application is devoid of such pleadings attributing domestic violence and thus in absence of domestic violence being attributed and demonstrated, an application under Section-12 cannot be entertained and no relief can be granted under Section-20 of the said Act in the nature of the monetary relief. She would also submit that the proceedings were filed by the wife under the provisions of the Specific Relief Act seeking a restrain order and in that proceedings the application Exh.-20 came to be filed which is not maintainable. She would also assail the order impugned on the ground that the Family Court has not taken into consideration the earnings of the husband.

The petitioner has tendered an affidavit before this Court on 19th March 2018, bringing on record certain documents which include an order passed by the High Court of Delhi on 28th

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July 2017 in a Company Petition by which the Company of the petitioner is placed under the control of the Official Liquidator in the form of provisional liquidator and direction is issued to the company and its directors from alienating, encumbering and parting with the possession of the assets of the company without the leave of the Court. According to Mrs.Sarnaik the company “Shiv Vani Oil and Gas Exploration Services Limited” is thus under liquidation and in these circumstances it is difficult for the petitioner to pay the amount of maintenance as ordered by this Court. The affidavit further proceeds to state that the petitioner is catering to the Educational expenses of the daughter who is studying in USA by obtain a loan and he is also bearing the educational expenses of his son who is studying in standard VIII.

8. Per contra learned counsel Advocate Shri.Sarwate appearing for respondent-wife would invite attention of this Hon'ble Court to the application filed by his client under order 21 Rule 41 of the Civil Procedure Code praying for disclosure of the details of the assets of the judgment debtor in light of the order passed by the Family Court. He would submit that on 30.01.2018 the Family Court has passed the following order on Exh.5.

“Perused application. No say filed by J.D. Perused

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authority relied by D.H.D.H. Wants to JD should disclose his assets which are required for the execution of decree as DH is not aware of his assets J.D. Did not file Say. As per O.21, R.41 of the CPC, JD can be directed to disclose his assets. It is necessary to execute the decree. Hence, JD is directed to give details of assets as mentioned in para (4)(a) to (z) of the application on the next date.”

9. He would further invite attention of this Court to subsequent order passed by 07.03.2018 by the Family Court, Pune to the following effect :-

“Perused application. Heard Ld. Advocate for DH. Today JD is present before the court but he did not comply the order of the court below Exh.5. So also JD did not deposit any decretal amount in court. There is no stay to the proceedings. DH pressed for sending the JD to jail. However, in my opinion last opportunity is to be given to the JD. Hence JD is directed to deposit 25% of decretal amount in court on or before 20.03.2018 and if he fails, he will be sent to jail. JD to note and strictly comply the order.

10. Learned counsel Shri.Sarwate would submit that the impugned order passed by the Family Court needs to be upheld since it is based on the earning capacity of the husband and since

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the wife is entitled to maintain same standard of living as the husband, and no fault can be found with the impugned order. He would submit that the wife is not having any source of livelihood and as such the award of maintenance of Rs.2 lakhs is just and proper to meet the requirements of the wife. Advocate Mr.Sarwate would also submit that he is constrained to file Contempt Petition No.459 of 2017 since the husband has failed to act in terms of the impugned order, thereby driving the wife to a stage of destitution.

11. With the assistance of the learned counsel for the parties I have perused the material placed on record and also perused the impugned order. The impugned order is passed on an application filed by the wife invoking Section-20 of the Domestic Violence in Petition No.B-2/2013 filed by the wife seeking a relief under the provisions of the Specific Relief Act. Though Mrs.Sarnaik had vehemently argued on the maintainability of the said application, on perusal of the provisions of The Protection of Women from Domestic Violence Act, 2005, it is apparent that the Act has been enacted to provide more effective protection of rights of women guaranteed under the Constitution of India, being victims of violence of any kind occurring in the family and the provisions therein would have to be construed in the backdrop of the object

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with which the statute is enacted. Section-26 of the said Act provides for relief in other suits and legal proceedings. The said section contemplates that any relief available under Section 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before the Civil Court, Family Court and a Criminal Court affecting the aggrieved person and the respondent whether such proceedings was initiated before or after the commencement of this Act.

Sub-section-2 of Section-26 further provides that any such relief may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a Civil or Criminal Court. Thus, by virtue of the Section-26, any relief available under the Domestic Violence Act can also be sought in any legal proceedings before any Civil Court, Family Court or Criminal Court. The wife had instituted proceedings under the Specific Relief Act before the Family Court, Pune and the said proceedings are pending. She filed application Exh.20 in that petition namely petition B-2/2013 and sought to relief of grant of maintenance or the monetary relief contemplated under Section-20 of the said Act.

In light of Section-26 of the Domestic Violence Act, 2005, the objection raised by Mrs.Sarnaik cannot be entertained.

However, at the same time it is to be noted that the

reliefs mentioned under Section 12 are available to “Aggrieved person” and the reliefs which may be availed by invoking Section 17, 18, 19, 20, 21 and 22 are dependent on one important aspect namely the said relief is available to an “aggrieved person” who alleges to have been subjected to any act of domestic violence by the respondent. The object of D.V. Act 2005, being to protect the rights of women who are offended by the act of domestic violence committed by the respondent which may include any adult male person or with whom the aggrieved person is in domestic relationship. The term Domestic Violence has been given a specific connotation under Section 3 of the Act and any act, omission and commission or conduct of the respondent shall constitute domestic violence in case it :-

- (a) harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any lawful demand for any dowry or other property or valuable security; or*
- (c) has the effect of threatening the aggrieved*

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person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injuries or causes harm, whether physical or mental, to the aggrieved person.

12. Thus, in order to claim relief under Section-12 of the Act which permits an “aggrieved person” to present an application to the magistrate seeking one or more reliefs under the Act, levelling the allegations of Domestic Violence. Thus, the reliefs contemplated under the Act are thus available to an aggrieved person who alleges that she is or has been in domestic relationship with the respondent and was subjected to any Act of Domestic Violence by the respondent. Allegation about the commission of a Domestic Violence Act is prerequisite for the magistrate or Court of competent jurisdiction to exercise the powers under the Protection from Women from Domestic Violence Act, 2005, and grant of any reliefs contemplated under the Act.

13. Perusal of the application filed by the wife claiming maintenance would reveal that apart from making the allegations that the husband is well off and earning a huge amount and the wife is left with no source of livelihood, not a single averment has been made as to any act of domestic violence which would have brought

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the applicant wife under the category of “aggrieved person” who would have been entitled for the benefits flowing under Section-12 including to the benefits under Section-20 of the D.V. Act 2005. The applicant in the application preferred on 16th February 2013 do not give a single instance of domestic violence and the application has been simply preferred under the caption as an application under Section-20 of the D.V. Act 2005 praying for following reliefs.

“(a) The maintenance or the monetary reliefs provided U/sec.20 of the Domestic Violence Act be granted.

(b) Monetary relief of Rs.5 lac per month be granted from the date of this Application.

(c) Reimbursement of School Fee for son Aryamaan be granted to the Petitioner to the tune of Rs.50,000/- incurred as on today.

(d) The Respondent be called upon to produce his bank statements from all the banks for the last 3 years more specially from Jan 1, 2010.”

(e) Any other just and equitable order may kindly be passed.”

14. Learned counsel Mrs.Sarnaik is perfectly justified in submitting that the provisions under the said enactment cannot be invoked unless the party alleges an act of domestic violence and approach the Court in the capacity as an “aggrieved person”.

Though the application filed by the applicant can be entertained in the pending proceedings under the Specific Relief Act, while entertaining an application which is filed Sub-section-1 of Section-12, it is imperative that the person approaching the Court is an “aggrieved person”. Though the Family Court in the impugned order has noted the submissions advanced on behalf of the petitioner-husband that the preliminary requirement of the domestic violence has not been proved by the petitioner and therefore application is not maintainable, the Family Court did not pay any heed to the said submission and rather proceeded to decide the matter on its own merits. The Court has merely noted that as per provision of Section-20 of the D.V. Act aggrieved by had claimed monetary relief for herself and her children however, a whether the applicant is an “aggrieved person” has not at all been considered by the Family Court. Though the Act of Domestic Violence would be established after rendering evidence before the Court, at least the Court *prima facie* must be satisfied that the person approaching is as an “aggrieved person”. It is not every person who can invoke the jurisdiction of the Court under the 2005 Act, simply for claiming maintenance, as the purpose of the enactment is to protect rights of women who are victims of violence of any kind occurring within the family. The Court has refused to consider the said aspect of the

matter.

15. The impugned order takes into consideration the potential of the husband to earn the amount as claimed by the wife and concludes that he is fetching a salary of Rs.15 lakhs and perks of Rs.5 lakhs per month. Though the Court expressed doubt with the wife's earning and has recorded that the wife has filed her Income Tax return showing her income from 2014 to 2017 and the Court has recorded, that the explanation given the wife that per year 2016-2017 her income is zero, is unacceptable. The Family Court has also perused the bank statement of the wife and has recorded that there are various deposits to her account and the Court has found the explanation offered by the wife that her mother is carrying out the business of stock broking from her account to be evasive. The Court has also noted that though the contention of the wife is that she is not doing any business but the documents reflected that she had huge investments and she has income from shares. However, considering the moral responsibility of the husband to maintain the wife and children, the Court has arrived at conclusion that the petitioner must pay maintenance to the wife.

16. The approach of the Family Court is grossly erroneous.

The amount of maintenance has to be fixed by striking a balance between the earning capacity of the husband and need of the wife and the children. No doubt a husband is under obligation to maintain his spouse and children, however, as regards the quantum of maintenance, the Court will have to award the said amount, based on the material placed before it and though some guess work is permissible, the Court cannot completely act on the basis of its own assumption and surmises.

Learned Counsel Mrs.Sarnaik has placed before this Court an order of the Delhi High Court in a company petition reflecting that the “Shiv Vani Oil and Gas Exploration Services Limited” of which the petitioner is owner has gone into liquidation and he has resigned from the said company by tendering his resignation on 01.06.2013. The aspect is important factor which is to be considered in order to have an estimation of the earning capacity of the husband, since the specific contention of the wife is that he is also the owner of other subsidiary companies. That may be true, however, there should be some material placed before the Court to demonstrate that he is also stake holder in some other companies. The petitioner is catering to the education of the children and he expresses no difficulty to continue to do so. He finances the daughter, who is taking education in USA and he is also

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catering to the need of the other child. It is no doubt true that wife is entitled for dignified amount so as to maintain herself according to the standards which she is accustomed to. The parties appear to be belonging to affluent background and she is entitled for same standard of living as the husband. What is the present capacity and status of the husband at the time of passing of the order granting award of maintenance must be looked into. The application was filed in the year 2013 whereas the impugned order is passed in 2017 and several events occurred in between two dates, which must be necessarily weighed by the Court while deciding the said application. This is however not done by the Family Court, Pune and it has awarded an amount of Rs.2 lakhs per month to the petitioner-wife without even bothering to take into consideration whether the wife is an “aggrieved person”. In the application the wife has prayed for an amount of Rs.5 lakhs for herself and reimbursement of school fee of her son. The husband has undertaken that he would continue to pay the fees of the son. However, as far as the maintenance of the wife is concerned the Family Court has grossly erred in granting the said amount without consideration of the relevant aspects of the matter as highlighted above. The said order thus cannot be sustained and the matter needs to be remanded back to the Family Court for due

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consideration in light of the observations made above. Both the parties are permitted to tender appropriate material before the Family Court so as to justify the claim of the maintenance by wife and the capability of the husband to pay such maintenance.

However, it is noted though the order is passed on 23.01.2017 directing the husband to pay the maintenance amount from the date of application, the husband has not been paid any amount till date. In the execution proceedings filed before the Family Court, the Family Court has already issued a direction of deposit 25% of decretal amount in the Court and or before 20.03.2018 otherwise the husband is directed to be sent to jail. This order was passed on 17.02.2018. The husband has failed to deposit any amount in terms of the order passed by Family Court by the impugned order.

Since this Court is of the opinion the matter needs to be remanded so as to the decide the entitlement of maintenance of the wife under Section-20 of the D.V.Act, the petitioner-husband is directed to deposit an amount of Rs.25% of the amount of the maintenance in terms of the directions of Judge family Court, by calculating the said amount from the date of the order i.e. 23.01.2017. The said amount is directed to be deposited before the Family Court within a period four weeks from date of this order.

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The Family Court would then reconsider the matter, on such deposit being made by the petitioner-husband and would also consider the application preferred by the wife for withdrawal of such amount.

17. The Family Court is directed to reconsider the application for maintenance within a period of three months from the date of the deposit of the amount by the petitioner-husband in the Family Court. The said amount would be then adjusted towards the quantum of maintenance which the family Court would award on its reconsideration. During the pendency of the proceedings before the Family Court on its remand, the petitioner-husband would pay an amount of Rs.25,000/- per month to the wife towards her maintenance, till the Family Court decides the matter. The petitioner is also directed to bear the educational expenses of the son and would commit no default in payment of his school fees.

Writ Petition is partly allowed. Impugned order dated 23.01.2017 passed by Family Court, Pune is quashed and set aside. Matter is remanded to Family Court, Pune for reconsideration and the same is directed to be decided in three months.

(SMT.BHARATI H. DANGRE, J.)