

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>th</sup> DAY OF JULY, 2017

BEFORE

**THE HON'BLE MR.JUSTICE ARAVIND KUMAR**

**W.P.NO.15406/2017**

**C/W**

**W.P.NO.20884/2017 (GM-FC)**

**IN W.P.NO.15406/2017**

**BETWEEN:**

..PETITIONER

**AND:**

...RESPONDENT

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THIS PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 03.04.2017 AT ANNEXURE-G IN M.C.NO.68/2016 AT ANNEXURE-J PENDING BEFORE THE

HON'BLE SR.CIVIL JUDGE, BANGALORE RURAL, IN I.A.NO.III U/S 24 OF HMA AS IN ANNEXURE-H. THE MAINTENANCE TO BE ENHANCED FROM ₹ 20,000/- TO MINIMUM ₹ 50,000/- TO COVER UP THE COST OF THE RESIDENCE, FOOD, CLOTHING, MEDICAL TREATMENT, TRAVELLING EXPENSES, ELECTRICITY BILLS, WATER CHARGES.

**IN W.P.NO.20884/2017**

**BETWEEN:**

...PETITIONER

**AND:**

RESPONDENT

THIS PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED ON 03.04.2017 ON THE I.A.3 PASSED BY THE HON'BLE SR.PRL. CIVIL JUDGE IN M.C.NO.68/2016 DIRECTING THE PETITIONER TO PAY ₹ 20,000/- AS INTERIM MAINTENANCE AT ANNEXURE-A.

THESE PETITIONS BEING HEARD AND RESERVED,  
COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY,  
THE COURT MADE THE FOLLOWING:

### **ORDER**

These two writ petitions are directed against order dated 03.04.2017 passed on I.A.No.3 under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act') in M.C.No.68/2016, whereunder the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru has awarded an interim maintenance of ₹ 20,000/- per month to the writ petitioner – wife and her son as against her claim of ₹ 1,08,000/- per month.

2. Facts in brief which has led to the filing of these petitions can be crystallised as under:

The marriage between petitioner in W.P.No.15406/2017 (hereinafter referred to as '**petitioner**') and petitioner in W.P.No.20884/2017 (hereinafter referred to as '**respondent**') was solemnized on 15.04.2001 at New Delhi. A son was born on 12.02.2003. They lived together in United States of America till September, 2007. Urging various grounds,

petitioner has sought for dissolution of marriage by filing a petition in M.C.No.68/2016 under Section 13(1)(ia) & (ib) of the Act. Respondent has appeared and filed statement of objections and contested the matter. Apart from said dispute, there are various other proceedings between the parties pending before different Forums.

Petitioner in M.C.No.68/2016 filed an interlocutory application – I.A.No.3 – Annexure-H (in W.P.No.15406/2017) under Section 24 of the Act seeking for a direction to the respondent to pay a sum of ₹ 1,08,000/- per month towards interim maintenance for herself and her son. Said application was resisted to by respondent by filing objections and trial Court after considering rival contentions, by impugned order dated 03.04.2017 allowed the application in part and has directed the respondent to pay monthly maintenance of ₹ 20,000/- per month to the petitioner and her son from the date of order until further orders as already noticed herein above.

3. Being aggrieved by this order, both petitioner as well as respondent have preferred these two writ petitions.

4. I have heard the arguments of \_\_\_\_\_ parties appearing in person.

5. It is the contention of \_\_\_\_\_ – petitioner appearing in person that she is without any job and she is unable to look after her minor son or to support herself and her son and she is dependent on her parents and relatives for the past 10 years. She would further contend that a sum of ₹10,000/- per month awarded in Crl. Misc. No.573/2015, which proceedings has been initiated by the petitioner against respondent under Section 12 of the Protection of Women From Domestic Violence Act, 2005, is highly insufficient and in the city of Bengaluru where cost of living is very high, she would be not in a position to maintain herself and her teenaged son by pauptry sum

of ₹ 10,000/- per month awarded by said Court and as such, she has sought for award of maintenance as prayed for in I.A.No.3. She would also contend, that while considering her claim for maintenance, status of parties has to be kept in mind and reasonable wants and necessities of applicant and economic standing of respondent and these aspects have been ignored by the trial Court. She would submit that respondent is a co-founder of a Company in North Carolina, USA and respondent having rich experience in Information Technology industry had commenced said company in 2008 and earning fabulous amounts. It is also contended that respondent is earning sufficient money and he is having rich experience of having worked in many international companies and as such, it cannot be construed that respondent is a person without any means to pay maintenance to his wife and son as claimed. Hence, she contends that meager amount of ₹ 20,000/- per month awarded by trial Court is highly insufficient and trial Court has not taken into consideration the actual requirement of petitioner and

her son namely, expenses she has to incur towards food, clothing, educational, medical, traveling expenses etc., as per their status and the maintenance awarded by trial Court is inadequate. She contends that respondent is concealing his economic status though he is the owner of a house at Electronic City, gainfully employed with a permanent assessment number issued by Income Tax Department. She also contends that respondent is capable of engaging lawyers and as such, it cannot be construed that he is a person without any means. By relying upon the judgments appended to the Memo dated 03.07.2017 and by relying upon various documents produced along with affidavits and rejoinders, she has prayed for modifying the order under challenge and has sought for allowing I.A.No.3 filed before trial Court in its entirety and prays for awarding maintenance @ ₹ 1,08,000/- per month.

6. Per contra, respondent appearing in person has reiterated the grounds urged in writ petition as also statement of objections filed by him

before Court below contending that he is already paying a sum of ₹ 10,000/- per month as per the order passed in Crl.Misc.No.573/2015 and suppressing this fact, present application – I.A.No.3 came to be filed by the petitioner before trial Court. He would further elaborate his submission by contending that petitioner is gainfully employed and he is unemployed and infact he was arrested at the Airport itself in India when he returned from USA and he has not been able to travel abroad to earn his livelihood and it is petitioner who had deserted him in USA and has returned to India in the year 2007. He submits that he has been paying ₹ 10,000/- for the last several months to petitioner and amount that has been awarded in Crl.Misc.No.573/2015 itself is sufficient to maintain petitioner and her son.

7. He would also contend that company was a start-up company commenced in the year 2008-09 by him along with his family friend and it required huge investment and as such, he had applied for visitor Visa in 2014 to contact potential

investors in USA and said Company had not raised any funds from any source and he is no more associated with said company and relies upon personal income tax returns produced at Annexure-H1 (in W.P.No.20884/2017) to contend his income is 'nil'. He would also contend that he does not have any money nor he has any resources available at his disposal to generate income and he is finding it extremely difficult to make a living itself. He also contends that he is unemployed and is not being given a chance by petitioner to earn money and is engulfed in various litigations commenced by the petitioner. He would also submit that during last few days of his stay at USA i.e., in the year 2015-16 his financial condition deteriorated and he could not even afford to pay the medical bills and as such he had applied for charity fund, which came to be granted as per Annexure-J (in W.P.No.20884/2017) and this would establish that he is unable to maintain himself. It is further contended that on account of various litigations pending in various Forms, he is unable to generate any funds and question

of payment of any amount to petitioner or their son would not arise, since he is not capable of paying any amounts on account of his non-earning. On these grounds, he seeks for order passed by trial Court being set aside and has prayed for his writ petition being allowed and writ petition filed by petitioner (wife) being dismissed.

**FINDINGS RECORDED BY TRIAL COURT:**

8. Impugned order passed by trial Court would disclose that after considering the rival contentions, it came to be held that document produced by petitioner, which discloses that \_\_\_\_\_ is a Company wherein the name of respondent is reflected and said document has not been disputed by respondent as a ground for award of maintenance of ₹ 20,000/- per month. It has also been held by the trial Court that defence of respondent that he is paying ₹ 10,000/- per month as per the order passed in CrI.Misc. No.573/2015 by itself would not be a ground to reject the claim of petitioner, since what has been awarded

thereunder is only an interim maintenance and taking into consideration the cost of living in a rented house at Bengaluru, award of maintenance @ ₹ 20,000/- per month would be just and reasonable and as such, said amount came to be awarded by trial Court.

9. Having heard the parties appearing in person and after bestowing my careful and anxious consideration to the rival contentions raised, following points would arise for consideration:

- (1) Whether maintenance of ₹ 20,000/- awarded by trial Court is to be enhanced, set aside, affirmed or modified?
- (2) What order?

**RE: POINT NO.(1)**

10. Pleadings of the parties would disclose that there is no dispute with regard to the fact that marriage between petitioner and respondent having been solemnized on 15.04.2001 at New Delhi. In the instant case, writ petitioner has filed a petition under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 for

dissolution of marriage solemnized between petitioner and respondent and she has sought for award of permanent alimony of ₹ 5 Crores for herself and her minor son amongst other reliefs claimed in the petition – Annexure-B1 (in W.P.No.20884/2017). Respondent has filed the statement of objections to said petition and is contesting the matter.

11. During the pendency of proceedings petitioner filed an interlocutory application – I.A.No.III under Section 24 of the Act to direct the respondent to pay a sum of ₹1,08,000/- per month towards interim maintenance pending disposal of the petition. She has contended that respondent is absconding for the last 9 years and he has not paid a single rupee to her and her son, though he has amassed wealth and has sufficient money with him and she does not have any income to take care of herself and her son. As against her claim, respondent has filed objections denying the averments made in the affidavit supporting the application and has also contended that petitioner is earning and has also

been awarded a sum of ₹ 10,000/- per month as maintenance in Crl. Misc. No.573/2015 and said amount is sufficient to meet expenses of petitioner and her son. In the light of rival contentions, as already noticed hereinabove, trial Court, pending disposal of main petition has awarded an interim maintenance of ₹ 20,000/- per month to petitioner and her son from the date of order i.e., from 03.04.2017. Against the said order, both petitioner and respondent have filed these two petitions seeking for enhancement and reduction respectively.

12. There cannot be any bar for claiming maintenance under Section 24 of the Act, even in the event of application under Section 125 of Cr.P.C. having been filed and as such, contention of respondent that present application is not maintainable on account of she having already filed Crl.Misc.No.573/2015 cannot be accepted and it is hereby rejected. A reading of Section 24 of Hindu Marriage Act, 1955, would disclose that while awarding maintenance, Court has to take

into consideration the income of parties before deciding the quantum of maintenance. Trial Court should also keep in mind the needs of the applicant and paying capacity of the respondent. During the pendency of divorce proceedings, at any point of time, if wife establishes that she has no sufficient independent income for her support, it would always be open for her to claim maintenance *pendente lite*. Section 24 of the Act provides for support to be given by earning spouse in favour of non-earning spouse during the pendency of proceedings before Court. In case respondent – husband attempts to stave off the claim for maintenance sought for by wife, it is trite law that husband will have to satisfy the Court that either due to physical or mental disability, he is handicapped to earn, support his livelihood and thereby, he is unable to pay maintenance to his wife and off-spring. Said provision would disclose that regard will be had to applicant's own income, if any and income of respondent, while examining the claim for maintenance.

13. In the background of aforesaid position of law, when the facts on hand are examined it would clearly disclose that petitioner - wife is claiming interim maintenance of ₹ 1,08,000/- per month from respondent. The break-up of said figure as indicated in the affidavit supporting the application reads as under:

|   |                     |                      |
|---|---------------------|----------------------|
| a | Electricity         | Rs.1,500/-           |
| b | Water & Maintenance | Rs.4,000/-           |
| c | Cable TV            | Rs.500/-             |
| d | Telephone           | Rs.2,000/-           |
| e | Grocery             | Rs.12,000/-          |
| f | Petrol for vehicle  | Rs.7,000/-           |
| g | School Fees         | Rs.20,000/-          |
| h | Misc. Expenses      | Rs.20,000/-          |
| i | Vegetables and milk | Rs.5,000/-           |
| j | Medical expenses    | Rs.9,500/-           |
| k | Servant maid        | Rs.1,500/-           |
| l | Rent                | Rs.25,000/-          |
|   | <b>Total</b>        | <b>Rs.1,08,000/-</b> |

14. In order to substantiate her claim that respondent is financially capable of meeting the said expenses, she has contended that respondent is the co-founder of a company known as

North Carolina, USA, since 2009 and in support of her

claim, she has produced print-out from the website of Department of The Secretary of State, North Carolina, USA, which indicates that respondent is the Member of company . Other document, like Annual Report would also establish this fact. As per the print-out obtained by petitioner from the website - zoominfo.com the annual income of company is depicted as 7,000,000 US\$. It also reflects that 35 persons are employed in the said company. Hence, contending that respondent is financially capable to meet the claim of maintenance of ₹ 1,08,000/- sought for, petitioner has sought for a direction being issued to respondent to pay the said amount. In fact, she has also contended that respondent has 19 years of experience in software industry and has worked in companies like, Keane India, Polaris Software, IBM Global Services – USA, etc.

15. As against said claim, respondent has contended in his writ petition for reduction of maintenance contending that said company was formed

with a family friend in the year 2008-09 and as an initial prototype as a proof of concept it was developed to check the feasibility of concept; a commercially viable version of software required huge investment of money and this investment could have been raised only through potential investors and to bag seed fund from the professional investors, a formal company had to be incorporated and accordingly, it was incorporated. It is further contended that company till date does not own any asset, profit or any employee other than its owners. To substantiate said claim, he has produced Annexure-F namely, income tax returns of said company filed till 2015 filed before tax authorities in USA. A perusal of said income tax returns would prima facie disclose that it relates to income tax returns filed for the years 2011 and 2012 and there are no assets of the company though gross receipts of sales have been reflected. It would also disclose that loss has been depicted in the said income tax returns. Hence, contending that he has severed his ties with the said company and he does not own any share in the said company, he has contended

that he is not capable of paying any maintenance amount to petitioner. He has also contended that he is unemployed and on account of his Visa having been cancelled and now facing several litigations initiated by petitioner before various Courts, he has been unable to maintain himself and is also unable to meet his both ends. He has also contended that he is unemployed and not being given a chance to earn on account of several litigations pending. He has also contended that on account of criminal cases having been initiated by petitioner, he is unable to secure any job and as such, he is not in a position to pay any maintenance to his wife – petitioner.

16. Thus, it would emerge that rival claims are based on oath against oath and partially on the basis of records, which would not reflect the true state of affairs depicting the financial capacity of both the parties. Be that as it may. The fact remains that respondent had commenced his business in USA by establishing a company known as \_\_\_\_\_, which is not

disputed by him. However, the actual income of the respondent is not available on record. Neither petitioner nor respondent has placed any positive evidence in this regard. The sole defence set up by the respondent to refute the claim of petitioner is that he has been paying her a sum of ₹ 10,000/- as ordered in CrI.Misc.No.573/2015 and said amount is sufficient for the petitioner and her son to maintain themselves.

17. Maintenance to be awarded to the wife and child would depend upon the income of husband and quantum of maintenance to be awarded would also depend upon the status of wife, the life she has lead till date and reasonable amount to maintain such state of living, are all factors which are relevant illustrative facts though not exhaustive, which has to be taken into consideration. Thus, reasonable and sufficient amount to support her living in the same manner, which she had lived, will have to be taken into consideration at the time of determination of quantum of maintenance. Undisputedly, in the instant case, both petitioner and

respondent had lived in USA after marriage from the year 2001 till 2007 and both parties are alleging of having been deserted. That is an issue which will have to be examined and adjudicated in the pending proceedings in M.C.No.68/2016 before trial Court.

18. Records on hand would disclose that petitioner and her son are living separately away from respondent from 2007 and as such she has to necessarily spend amount to eke out their living. From the date of petitioner have been living separately from the company of respondent i.e., from the year 2007 till date of filing of petition in 2016, respondent has not supported or taken care of their needs as expected of a prudent husband and father. Though respondent contends that he has been maintaining them, no material is placed in that regard. Thus, petitioner has been perforced to mend for herself and it is quite natural that she would have sought the assistance of her parents to support her or parents might have voluntarily supported her in the times of her needs.

19. Though both parties have relied upon several documents, it requires to be noticed that petitioner has contended that respondent is financially well-off and is having perennial income and has relied upon the printouts obtained from the website of 'Google Search' reflecting that respondent is co-founder of

Income tax returns of said company filed by respondent also depicts that there is no income generated by the said company for the period 2011-2013. As such, it cannot be gainsaid by petitioner that she has placed cogent material to establish the actual income of the company of which respondent is a Co-founder. Likewise, respondent – husband has contended that petitioner is gainfully employed with company known and called as \_\_\_\_\_ and has filed a memo on 03.07.2017, which depicts that one \_\_\_\_\_ is said to be 'Client Service Assistant at \_\_\_\_\_ .', it does not establish the nexus of petitioner herein to said company. In the absence of any positive material being placed in that regard, it

cannot be gainsaid by respondent also that petitioner is gainfully employed, particularly in the background of petitioner having denied the said fact. Suffice to observe that voluminous records produced by either of parties was not available before the trial Court when the order under challenge came to be passed. Hence, this Court in exercise of extraordinary jurisdiction would not be in a position to examine the veracity, credibility and authenticity of these documents, since it would be disputed question of fact as could be seen from the pleadings of parties. Thus, it would be open to the parties to establish their claim and tender evidence in support of their claim in this regard.

20. This would lead to incidental question as to 'whether application filed by petitioner is to be rejected or maintenance awarded by the trial Court is to be affirmed or modified?'

21. There is no dispute to the fact that petitioner is living at Bengaluru along with her son from 2007 till date and undisputedly, respondent had not extended

any financial help either to petitioner or to her son from 2007 till order came to be passed in CrI. Misc. No.573/2015 whereunder a sum of ₹ 10,000/- per month has been awarded as interim maintenance. In a city like Bengaluru where cost of living is considerably high, petitioner and her son cannot be expected to fend for themselves without there being any financial assistance from the respondent, who is required to maintain them. As to whether petitioner has withdrawn from the company of respondent or she was compelled to leave the matrimonial home under the circumstances stated in the petition for divorce or she had been driven out from the matrimonial home as claimed by her, are all disputed question of facts which will have to be examined by trial Court and evidence has to be tendered by parties in support of their respective contentions and as such, at this juncture, plea of petitioner cannot be accepted as it is. However, it is made clear that no opinion is expressed in that regard.

22. Fact that respondent was a co-founder of a company in USA by name ..... is also not in dispute. However, dispute is with regard to income of said company and both parties have relied upon the documents produced along with their pleadings to buttress their respective contentions. On the one hand, petitioner has produced the Annexure-D1 (in W.P.No.15406/2017) with regard to existence of said company and Annexure-E (in W.P.No.15406/2017), which reflects the revenue of said company as 7,000,000 US\$. As against the said claim, respondent has filed the income tax returns of said company filed in USA as per Annexure-F series (in W.P.No.20884/2017) to demonstrate the financial status of said company. Said income tax returns are not counter signed by any statutory authority. Income tax returns – Annexures-H1 series (in W.P.No.20884/2017) filed in USA by the respondent for the years 2011, 2012 do suggest there is income earned by respondent. However, no certificate issued by a Chartered Accountant has been placed on record by respondent certifying actual income of

respondent. Statement of accounts for the period 01.01.2015 to 30.06.2015 - Annexure-H2 (in W.P.No.20884/2017) placed by the respondent would also reflect that there has been financial transactions during said period. Same would clearly disclose on 18.03.2016, 21.03.2016 and 31.03.2016 amounts as indicated therein, has been credited to the respondent's account. Hence, at this juncture, statement of accounts cannot be brushed aside. Said statements would also disclose that respondent has been having financial transactions and is in receipt of amounts. As to from whom, when and for what reason, no opinion can be expressed, since entries therein would indicate that certain sums on the dates noticed hereinabove, apart from other dates, there has been instances of amounts having been credited to respondent's account by transfer and it is indicated therein that it is "gift to relatives and friends". These are the factual aspects which will have to be examined by this Court after evidence being recorded. However, the fact remains that respondent has been transacting in his account

with State Bank of India during 2016. Likewise, petitioner has also not placed any documentary evidence as to what is the actual expenses being incurred by her and her self assertion cannot be accepted as gospel truth.

23. In the light of aforesaid discussion, this Court is of the considered view that trial Court has rightly taken note of the statement made by the petitioner on oath as against the statement on oath made by respondent to arrive at a conclusion that a sum of ₹ 20,000/- per month is to be awarded as interim maintenance during the pendency of proceedings, which finding cannot be termed as either erroneous or contrary to facts. In the absence of either of parties placing any cogent material to establish the actual income, maintenance ₹ 20,000/- per month awarded by trial Court after taking note of the fact that petitioner has been also awarded a sum of ₹10,000/- in CrI.Misc.No.573/2015 and as such, she would be

receiving in all a sum of ₹ 30,000/- per month, is based on sound reasonings not calling for interference.

24. A perusal of I.A.No.3 filed by respondent for maintenance would indicate that same has been filed on 22.10.2016 and impugned order came to be passed on 03.04.2017. In view of the fact that order of trial Court awarding maintenance @ ₹ 20,000/- per month has been affirmed, as discussed hereinabove, finding of trial Court that she would be entitled to same from the date of order requires to be modified, inasmuch as, from 2007 till she filed the application, respondent has not paid any maintenance to petitioner or her son and for the past 9 years petitioner has managed to give education to her son and also take care of his needs by mobilising funds and as such, she would be entitled to interim maintenance from the date of application and not from the date of order and to that extent, order of the trial Court requires to be modified.

25. For the reasons aforestated, I proceed to pass the following:

**ORDER**

- (i) W.P.No.15406/2017 is hereby allowed in part and W.P.No.20884/2017 is hereby dismissed.
- (ii) Order dated 03.04.2017 passed in M.C.No.68/2016 allowing I.A.No.3 and awarding maintenance @ ₹ 20,000/- per month is hereby affirmed. However, said order restricting petitioner's claim from the date of order is hereby modified and it is hereby ordered that petitioner would be entitled to maintenance from the date of application until further orders.
- (iii) No order as to costs.

**Sd/-  
JUDGE**

\*sp/DR