

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, AT - PUNE.

ORDER BELOW EXH. 1 IN CIVIL SUIT NO. 30/2019

1- On 11.08.2020, order was passed below Exh.1 in Civil Suit No. 10/2017 which is filed by the husband of the present plaintiff in which it was the contention of the learned advocate for the plaintiff (wife in the present suit) that the plaintiff-husband has not filed reply to the application filed by the wife for maintenance, to which, it was submitted by the learned advocate for the husband that there is no such application on record. It is observed in the said order that under such circumstances, the learned advocate for the defendant-wife to point out the said application for maintenance from the record, on the next date.

2- According to the learned advocate for the plaintiff-wife in this suit, the prayer regarding maintenance is made in the prayer clauses of the suit. The learned advocate for the plaintiff submitted that since 2017, the plaintiff is trying for interim injunction and interim maintenance.

3- It is the matter of the record that the Civil Suit No. 10/2017 is filed by the husband Rishad, for divorce and the Civil Suit No. 30/2019 is filed by the wife Nahida, for divorce. Both the suits are under the provisions of the Parsi

Marriages and Divorce Act, 1936. It is seen from the record that the Civil Suit No. 30/2019 was initially filed before the Chief Matrimonial Court, at Bombay and it came to be transferred to Pune.

4- The following is the undisputed factual matrix in both the suits :

(a) The Notice of Motion No. 6/2017 in the present suit which was earlier numbered as Parsi Suit No. 8/2017 was filed by the plaintiff-wife by making following prayers :

- (a) *Till the hearing and final disposal of this suit, this Hon'ble Court may be pleased to restrain the defendant from taking forcible physical custody of minor son Marc.*
- (b) *This Hon'ble Court may be pleased to grant an amount of Rs.50,000/- per month, with 10% annual escalation as and by way of maintenance to the plaintiff and minor son Marc.*
- (c) *This Hon'ble Court may be pleased to direct the defendant to pay for the education and education related expenses of minor son Marc, till such time he is able to stand on his own fit.*
- (d) *This Hon'ble Court may be pleased to direct the defendant to pay an amount of Rs.50,000/- towards monthly rental accommodation for the plaintiff and minor son Marc.*
- (e) *For costs of this Motion to be provided for.*
- (f) *For any other and further reliefs, this Hon'ble Court deems fit and proper in the facts and circumstances of the present proceedings.*

The said Notice of Motion is decided by the Hon'ble Bombay High Court by Judgment and order dated 22.09.2017. Para-2 of the said order shows that in the said Notice of Motion, the arguments were restricted only in respect of Prayer Clause (a).

(b) The plaintiff-wife filed the Appeal No. 374/2017 against the aforesaid Judgment and order dated 22.09.2017 before the Division Bench of Hon'ble Bombay High Court and the said appeal came to be dismissed by the Judgment and order dated 06.12.2017.

(c) The plaintiff-wife filed the S.L.P. bearing Special Leave Petition (CIVIL) Diary No(s). 11202/2018 against the said Judgment and order dated 06.12.2017 passed in Civil Appeal No. 374/2017 by the Hon'ble Bombay High Court, making following prayers :

- (i) *Pass an ex-parte ad-interim order staying the effect and operation of the impugned Judgment and final order dated 06.12.2017 in appeal (L) No. 374/2017 passed by the Hon'ble High Court of Judicature at Bombay.*
- (ii) *Pass an ex-parte ad-interim order allowing the petitioner - wife to reside and settle in Mumbai with the sole custody of Marc after the completion of the current school year 2017-18.*
- (iii) *Pass an ex-parte ad-interim order staying further proceedings in Civil Suit No. 10/2017 before the Principal District Judge, Pune.*
- (iv) *Direct the respondent - husband to pay Rs.50,000/- per month as maintenance with 10% annual escalation along with provision of rental expenses of residing in Mumbai with Marc.*

- (v) *Direct the respondent-husband to pay for the education and education related expenses of Marc.*
- (vi) *Pass such other or further interim orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.*

The said S.L.P. came to be disposed of by order dated 18.05.2018.

5- The order dated 17.10.2019 passed by my learned Predecessor brother Judge, below Exh. 1 in Civil Suit No. 10/2017 show that the parties agreed that rather than proceeding with the pending applications, at this stage, they would endeavour to cooperate this Court for getting the present matter as well as those matters directed to be transferred to this Court and tried along with this matter, to be disposed of by the end of January-2020.

6- In both the suits, issues are framed and they are at Exh. 176 in Civil Suit No. 10/2017 and at Exh. 10 in Civil Suit No. 30/2019, on 02.03.2020. It is the matter of record that the husband-plaintiff has also filed the affidavit of examination-in-chief, in lieu of oral evidence, at Exh. 183 on 11.06.2020.

7- In the backdrop of the above factual matrix, the aspect of maintenance to the wife can appropriately be considered after both the sides adduce their respective evidence in the suits and when the matters are decided

finally, in accordance with law, instead of dealing upon the aspect of interim maintenance, at this stage.

Adjourned to 29th September 2020.

Place– Pune
Date – 08.09.2020

(Neeraj P. Dhote)
Principal District Judge, Pune.

I affirm that the contents of this P.D.F., file order /judgment are same word for word as per original Judgment.

Name of Steno : Mrs. S. S. Yengul
Stenographer (Grade-1)

Court Name : Shri. Neeraj P. Dhote
Principal District &
Sessions Judge, Pune.

Date : 08-09-2020
Judgment signed by P.O. on : 08-09-2020
Judgment uploaded on : 08-09-2020.