



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Mr. Nitish Banka a/w. Mr. Pritish Chatterjee for the Applicant
Ms. Shilpa Talhar, APP for the Respondent-State.
Mr. Virendra Pethe for Respondent No.2.

P. C. :

1. Heard.
2. By this petition, challenge is to the order dated 7th February 2024 passed by the Appellate Court dismissing the Appeal filed by the petitioner-husband against the following order of the Trial Court:

“01] The application is partly allowed.

02] The non-applicant shall pay Rs. 40,000/- (Rs. Forty Thousand) per month to the applicant as interim maintenance from the date of present application i.e 03/09/2020 till decision of main application.

A) Applicant shall submit copy or original bills month wise from 03/09/2020 as required for reimbursement of her medical expenses from Govt.

B). *Non-applicant is at liberty to do further process and get the reimbursement. Applicant shall co-operate him to get reimbursement.*

03] *Non-applicant shall not restrain applicant from having access to the flat No.701, Vrundavan Valley, Khadakpada, Kalyan without adopting due process of law till the decision of main application.*

A) *Applicant shall well in advance, intimate non applicant about her scheduled visit to said flat.*

04] *The copy of the order shall be provided to the parties free of cost, on demand.”*

3. The only submission advanced by the learned counsel for the petitioner is that the petitioner is not averse to the payment of medical expenses, however as the amount has been directed towards payment of medical expenses, same should be permitted to be paid at actuals. He further submits that respondent wife is admittedly employed and earning a salary of Rs.60,000/-. He submits that the applicant is entitled to reimbursement of the medical bills from the employer of the respondent-wife provided the copies of the bill are submitted within the fixed time frame. He points out that only some of the bills were submitted for reimbursement and as such the petitioner is prejudiced due to default on the part of respondent-wife to submit the bills.

4. *Per contra*, learned counsel for the respondent-wife submits that the respondent is incurring medical expenses for the cancer treatment in respect of which order of the Trial Court has been passed. He submits that initially the bills were submitted however subsequently during the challenge to the proceedings respondent-wife was unable to submit the bills. He submits that despite thereof considering the order the petitioner is liable to pay the arrears of the medical expenses.

5. Considered the submissions and perused the record.

6. The Trial Court after considering the medical expenses incurred by the respondent-wife has directed the payment of Rs.40,000/- per month as and by way of interim maintenance till decision of the main Application. The order of the Trial Court is subject to a caveat that applicant shall submit copy of original bills month-wise from 3rd September 2020 for purpose of seeking reimbursement of medical expenses which the petitioner-husband is at liberty to process and get the reimbursement. The same appears to be for the reason that the respondent-wife is having the facility of reimbursement of the medical expenses considering that she is employed in Government service. The Trial Court upon cumulative assessment of the facts have firstly directed

the petitioner-husband to pay Rs.40,000/- which amounts he can get reimbursed from the employer of the respondent-wife.

7. Although submission is that amount of Rs.40,000/- is excessive considering that the same is directed towards the medical expenses incurred by the respondent -wife, I am not inclined to decrease the said amount. It is not the case of the petitioner that the respondent is not undergoing the cancer treatment and his only submission is that entire amount of Rs.40,000/- is not required in each month and that the same should be permitted to be paid as per actuals.

8. Considering that the respondent wife is required to initially incur the expenses which she may not be able to incur on account of her limited salary and it is imperative that she undergoes the treatment, in my opinion, in the interest of justice petitioner be directed to pay a sum of Rs.40,000/- per month to the respondent towards medical expenses of the respondent wife. Respondent wife on or before 5th of the succeeding month shall submit the original bills of the medical expenses to the petitioner-husband which will include Doctor's consultation charges, hospital charges and the cost of medicines. If the amount which has been incurred by the respondent wife is less than Rs.40,000/- the balance will

be carried forward to next month and in the next month petitioner-husband will have to pay a lesser amount after adjusting the previous amount.

9. As the payment of Rs.40,000/- was subject to the condition of submission of the original bills month-wise from 3rd September 2020 which has not been complied with by respondent-wife the arrears if any will be restricted only to the bills which were submitted by the respondent wife to the petitioner-husband. This is for the reason that the Trial Court has specifically taken into consideration the reimbursement of medical facility which was available to the wife and just to ensure that in spite of availability of medical facility the petitioner-husband should not be put to a prejudice, the condition was imposed by the Trial Court of submission of the original bills by the respondent-wife. It was therefore order of the Trial Court which the respondent-wife was enjoined upon to comply. As such, if the copies of medical bills are not submitted as directed by the order of the Trial Court dated 4th February 2022 the respondent wife will not be entitled to the medical expenses to that extent. The petitioner is directed to clear the arrears of the medical expenses in respect of the bills which are already submitted by the respondent- wife to the petitioner-husband within a period of 3 months.

Petition stands disposed of in the above terms.

10. Needless to clarify that as to the order of the Trial Court directs the co-operation of the applicant in reimbursement process the applicant shall submit all necessary documents as well as take all steps to ensure that the petitioner-husband is able to get reimbursement of the medical bills submitted.