

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13533 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge?

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MUKESHKUMAR DEVRAMBHAI PRAJAPATI - Petitioner(s)

Versus

PURVIBEN D/O HIRABHAI K PRAJAPATI & 1 - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1,
MR SP MAJMUDAR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/12/2008

ORAL JUDGMENT

1. **Rule.** Mr.S.P.Majmudar, learned Advocate waives service of rule on behalf of respondent No.1. With the consent of the learned Advocates for the respective parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 227 of the Constitution of India, the petitioner has prayed for an appropriate Writ, direction and/or order quashing and setting aside the impugned order dated 20.08.2008 passed by the learned 4th Additional Senior Civil Judge and JMFC, Patan below Exh.9 in H.M.P. No.15 of 2007 by which the learned trial Court has directed the petitioner to pay Rs.3000/- per month to respondent No.1 – wife, Rs.2000/- to respondent No.2 – minor and Rs.200/- per month additionally towards transportation etc. i.e. in all Rs.5200/- per month towards interim alimony during the pendency and final disposal of H.M.P. No.15 of 2007.

3. On considering impugned order it appears that as such no reasons are assigned by the learned trial Court awarding Rs.3000/- per month to respondent No.1 – wife, Rs.2000/- to respondent No.2 – minor and Rs.200/- per month additionally towards transportation etc. i.e. in all Rs.5200/- per month towards interim alimony and even there is no finding by the learned trial Court with respect to income of the petitioner – husband. Even there is no reference to what is the extent of agricultural land and what can be the income out of the said agricultural land and the learned trial Court has just observed that father of the petitioner is having agricultural land which is self acquired property in which the petitioner has interest. Except by observing the same nothing further has been observed and straightway impugned order has been passed awarding maintenance

at Rs.5200/- per month. In absence of any reasoning and/or discussion with respect to the income of the petitioner, impugned order passed by the learned trial Court can be said to be most arbitrary. Under the circumstances, impugned order deserves to be quashed and set aside without further entering into merits of the case and the matter is to be remanded to the learned trial Court for deciding the same afresh in accordance with law and on merits and considering the observations made herein above.

4. Under the circumstances and for the reasons stated above, the petition succeeds. Impugned order dated 20.08.2008 passed by the learned 4th Additional Senior Civil Judge and JMFC, Patan below Exh.9 in H.M.P. No.15 of 2007 is hereby quashed and set aside and the matter is remanded to the learned trial Court for deciding application Exh.9 in the aforesaid H.M.P.No.15 of 2007 afresh in accordance with law and in light of the observations made herein above and after giving prima-facie finding with respect to income of the husband. Said exercise be completed within a period of 3 (three) months from today and the amount which is already deposited by the petitioner pursuant to the impugned order which is quashed and set aside shall be treated as ad-hoc without prejudice to the rights and contentions of the petitioner and subject to the ultimate outcome of the order below Exh.9 that may be passed by the learned trial Court on remand. In the meantime, the petitioner to continue to pay maintenance to the

respondent at the rate of Rs.5200/- per month in all (inclusive of amount awarded by the Criminal Court under Section 125 of the Criminal Procedure Code) without prejudice to his rights and contentions. It will be open for the petitioner and respondent to place additional material on record, which may be considered by the learned trial Court. Rule is made absolute accordingly. Direct service is permitted.

[M.R.Shah,J.]

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