

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6143 OF 2017**

Mr. Mangesh P. Patil

....Petitioner

Vs.

Smt. Jyoti Mangesh Patil

....Respondent

....

Mr. Nitin Gangal for the Petitioner.

Ms Nishtha Mohanty i/b. K.S. Garg for the Respondent.

**CORAM : A.S. GADKARI, J.****DATE : 31<sup>st</sup> AUGUST 2017****P.C.:**

1. By the present petition, the petitioner has challenged Order passed below Exh.36 in Marriage Petition No.387 of 2011 dated 24.01.2017 by the 10<sup>th</sup> Jt. Civil Judge, S.D., Thane, thereby rejecting application of the petitioner for modification of order dated 05.02.2014 passed under Section 24 of the Hindu Marriage Act 1955.

2. The record indicates that the petitioner herein has filed Marriage Petition No.387 of 2011 for divorce under Section 13(ia) and (ib) and Section 26 of the Hindu Marriage Act, 1955 in the Court of C.J.S.D. Thane which is pending for final adjudication. In the said marriage petition, the respondent-wife filed an application under Section 24 of the Hindu Marriage Act, 1955 dated 05.09.2012 below

Exh.10 for interim maintenance. The trial Court by its order dated 05.02.2014 was pleased to allow the said application and directed the petitioner-husband to pay an amount of Rs.8,000/- per month to the respondent-wife towards maintenance from the date of application i.e. 05.01.2012 (emphasis supplied) till disposal of the petition. The petitioner, thereafter, filed an application below Exh.36 for modification of the said order dated 05.02.2014 and for rescinding the maintenance granted in favour of the respondent-wife and for fixing the maintenance of two children at the rate of Rs.2,000/- per month on the grounds which have been more specifically mentioned in the said application. The trial Court by the impugned order dated 24.01.2017 has rejected her application.

3. The record clearly reveals that the application under Section 24 of the Hindu Marriage Act, 1955 below Exh.10 was preferred by the respondent-wife on 05.09.2012 and not on 05.01.2012. Thus, the trial Court in its order dated 05.02.2014 in para No.2 has erroneously recorded the date of application as 05.01.2012 instead of 05.09.2012. As stated earlier the correct date is 05.09.2012 in preferring the application below Exh.10.

4. After perusing the entire record, it appears to me that the trial Court has rightly granted interim maintenance to the Respondent and

children and has not committed any error apart from what is noted earlier in the order dated 05.02.2014 passed below Exh.10 and impugned order dated 21.01.2017 passed below Exh.36.

5. In view thereof, the order dated 05.02.2014 is modified to the extent that the date of application preferred by the respondent-wife below Exh.10 is 05.09.2012 and not 05.01.2012.

6. The petition is accordingly disposed off in the aforesaid terms.

**( A.S. GADKARI, J.)**