

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1804 OF 2015

Mr. Prasad Acharya ... Petitioner
Vs.
Mrs. Rachana Prasad Acharya & Anr. ... Respondents

Mr. Pradeep J. Thorat, Advocate for the petitioner.
Mrs. Rachana Acharya, respondent no. 1 appearing in person.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 18, 2015**

P.C.:

Rule. Rule made returnable forthwith. By consent of the parties, the matter is decided finally at the stage of admission.

2. In this Writ Petition, the petitioner/husband challenged the order dated 13th January, 2015 passed by the Family Court Judge, Bandra, Mumbai below Exhibit-2 in M.J. Petition No. A-1756/2011. Exhibit 2 is the Application moved by the wife for interim maintenance and injunction under the protection of Domestic Violence Act of 2005. Earlier Exhibit-2 was fixed for hearing on 25th July, 2012, however the said matter was pre-poned on 9th July, 2012 and on 9th July, 2012 ex-parte order was passed directing the petitioner/husband to pay house loan of Rs.15,00,000/-, which is taken from HDFC Bank or to pay E.M.I. regularly to the bank till the clearance of the loan amount. As the said order was passed ex-parte, it was challenged by moving an application to set aside the said ex-parte

order. The said Application Exhibit-23 was allowed by the learned Judge of the Family Court on 28th October, 2013. In the result, by the said order, the order of directing petitioner/husband to pay E.M.I. or clear the loan was also set aside. The said Application Exhibit-2 was thereafter again heard and it was partly allowed by the order under challenge in this Writ Petition.

3. The learned counsel for the petitioner has submitted that the order passed by the learned Judge of the Family Court is illegal and perverse. He relied on the observation of the learned Judge on paragraph 7 of the said order. He pointed out that the learned Judge has passed the order of payment of E.M.I. against the petitioner/husband only on the ground that earlier Judge has passed the order directing the respondent to pay the installments towards E.M.I. of the loan by an order dated 11th July, 2012 and the said order was not challenged by respondent no. 1, hence observed that it has to reach its finality. The learned counsel has pointed out that the view of the learned Family Court Judge is illegal and prays for remand.

4. The respondent/wife is present in person. She made submissions on merits and stated that she has good case against the petitioner/husband and supported the order passed by the learned Judge

of the Family Court.

5. The view taken by the learned Judge of the Family Court that the order dated 11th July, 2012 has reached its finality because it is not challenged, is completely illegal, as the earlier Judge has set aside its order on 28th October, 2013 and thus, as the order was set aside, the order of directing payment of E.M.I. or clearance of loan in fact was not in force. The said finding is incorrect in law. On this point, the matter is required to be remanded.

6. The learned counsel for the petitioner clarifies that the petitioner/husband does not challenge the entire order but only has challenged clause (2) of the order dated 13th January, 2015 and he submits that only clause (2) is to be set aside.

7. Clause (3) & (4) in the impugned order, therefore, are not set aside.

8. When the order itself is set aside, the view taken by the Learned Judge of the Family Court that the said order was not challenged by the husband is illegal. No other reasons are given for fixing liability on the husband. Some reasons are required. Hence, the matter is remanded. However, by way of interim arrangement, as there is a loan and the bank

may initiate proceedings of forfeiture in respect of the said flat, the petitioner/husband is directed to continue to pay E.M.I. and see that no proceedings shall be initiated for four months in respect of said flat.

9. The learned Judge of Family Court to hear the Application Exhibit-2 afresh within three months, i.e. till 30th September, 2015.

10. The Writ Petition is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)