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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 974 OF 2014

WITH

CRIMINAL APPLICATION NO. 589 OF 2014

Mr. Omprakash Dharamnarayan Agarwal .. Petitioner

Vs.

1. Mrs.Kiran Omprakash Agarwal

2. The State of Maharashtra .. Respondents

WITH

CRIMINAL APPLICATION NO. 293 OF 2014

IN

CRIMINAL WRIT PETITION NO. 974 OF 2014

Mrs.Kiran Omprakash Agarwal .. Applicant

Vs.

Mr. Omprakash Dharamnarayan Agarwal .. Respondent

ALONG WITH

CRIMINAL WRIT PETITION NO. 1435 OF 2014

Mrs.Kiran Omprakash Agarwal .. Petitioner

Vs.

1. The State of Maharashtra

2. Omprakash Dharamnarayan Agarwal .. Respondents

Mr.Bharat H.Mehta, Advocate for the Petitioner (husband) in WP/974/14 and for Applicant in Cri. Appln. 589/14, for Respondent No.2 in WP/1435/14, for respondent in Cri. Appln. 293/14.

Mr.Vivek Kantawala a/w Ms.Bhairavi Waravdekar & Mr.Amey Patil i/b M/s.Vivek Kantawala & Co., Advocates for Respondent No.1 (Wife) in WP/974/14 and for Respondent No.1 in Cri. Appln. 589 of 2014, for Petitioner in WP/1435/14, for Applicant in Cri.Appln. 293/14.

Mr.A.R.Patil, APP for the State.

CORAM : R.G.KETKAR, J.
DATE : 15th JANUARY, 2015

P.C. :

. Heard Mr.Bharat H.Mehta, learned Counsel for the petitioner (husband) in Writ Petition No. 974 of 2014, for applicant in Criminal Application No. 589 of 2014, for respondent No.2 in Writ Petition No. 1435 of 2014 & for respondent in Criminal Application No. 293 of 2014. Heard Mr.Vivek Kantawala, learned Counsel for the respondent No.1 (wife) in Writ Petition No. 974 of 2014 and in Criminal Application No. 589 of 2014, for petitioner in Writ Petition No. 1435 of 2014, for applicant in Criminal Application No. 293 of 2014. Heard Mr.A.R.Patil, learned APP for the State.

2. Writ Petition No. 974 of 2014 is filed by the husband and Writ Petition No. 1435 of 2014 is filed by the wife. Both have challenged the judgment and order dated 17/01/2014 passed by the learned Judge, Family Court No.2, Mumbai below Interim Application No. 15 of 2014 (Exhibit 6) in Petition No. E – 335 of 2011. By that order, the Family Court partly allowed the application and directed the husband to pay interim maintenance @ Rs.75,000/- per month to the wife from the date of the application i.e. 22/08/2011 till final disposal of the main petition filed by the husband. The husband is directed to pay arrears to the wife in 6 monthly equal installments together with regular current monthly maintenance. It is made clear

that in case of any default, the wife will be at liberty to recover the dues at once. The husband is also directed to pay Rs.50,000/- to the wife towards litigation expenses.

3. Mr.Mehta, for the husband submitted that in pursuance of the order dated 16/04/2014, the husband has deposited amount of Rs.10,00,000/- in this Court. The husband has taken out Criminal Application No. 589 of 2014 for permission to withdraw the amount of Rs.1,72,633/- towards society's maintenance charges from the amount of Rs.10,00,000/- deposited by him. Mr.Kantawala states that the wife has taken out Criminal Application No. 293 of 2014 for permission to withdraw the amount of Rs.10,00,000/- deposited by the husband.

4. Mr.Mehta submitted that inadvertently the husband could not produce income tax returns for the assessment year 2012-13, 2013-14 and estimated return for the year 2014-15. On the other hand, Mr.Kantawala invited my attention to paragraphs 7 of the impugned order. The learned Judge of the Family Court recorded that the wife has produced voluminous record to show husband's bank balance, investments and donations. The learned Judge, however, observed that at this juncture, it is not necessary to scrutinize the same. Mr.Kantawala submitted that if all these documents are considered, then in that event, wife is entitled to maintenance more than Rs.75,000/- per month.

5. After arguing the petitions for some time, both the Counsel, upon taking instructions from the respective clients who are present in the Court, submit that by consent of the parties, the impugned order may be modified and the same may be treated as ad-interim order and Interim Application No. 15 of 2014 (Exhibit 6) may be restored before the Family Court for deciding it afresh. They further submit that the parties may be permitted to produce documents in support of their respective case.

6. The learned Counsel for the parties state that after giving credit of Rs.10,00,000/- deposited by the husband in pursuance of order dated 16/04/2014, the arrears of maintenance as on 31/12/2014 is Rs.21,50,000/-. Mr.Mehta, upon taking instructions from the husband who is present in the Court states that within 10 weeks from today, he will pay the amount of Rs.10,00,000/- to the wife. He further states that within 20 weeks from today, husband will pay remaining amount of Rs.11,50,000/- to the wife. In addition to this, husband will go on paying maintenance of Rs.75,000/- per month from January 2015. Mr. Mehta further states that husband has no objection for the wife withdrawing Rs.10,00,000/- deposited in this Court provided the society's maintenance charges as on 31/01/2015 are paid by the wife. Mr.Kantawala states that upto January 2015, wife will pay society's maintenance charges. He further states that wife has no objection if the husband occupies the matrimonial home

from 01/02/2015, provided from that date onwards, he goes on paying society's maintenance charges.

7. In view thereof, by consent of the parties, petitions and applications are disposed of in the following terms.

- i) The impugned order dated 17/01/2014 is modified and shall be treated as an ad-interim order pending the hearing of Interim Application No. 15 of 2014 (Exhibit 6).
- ii) Interim Application No. 15 of 2014 (Exhibit 6) is restored to the file of the Family Court for deciding it afresh.
- iii) The parties are permitted to produce documents in Interim Application No. 15 of 2014.
- iv) The wife is permitted to withdraw Rs.10,00,000/- deposited by the husband and she will pay society's maintenance charges upto January 2015. She will also permit the husband to occupy the matrimonial home from 01/02/2015.
- v) The husband agrees that he will pay society's maintenance charges from February 2015 onwards.
- vi) The husband shall pay Rs.10,00,000/- within 10 weeks from today and remaining amount of Rs.11,50,000/- within 20 weeks from today to wife. In addition to this, the husband will go on paying maintenance @ Rs.75,000/- per month as an ad-interim order from January 2015.

vii) The proceedings before the Family Court namely Petition No. E – 335 of 2011 shall remain stayed for a period of 12 weeks from today.

8. In view of this, Criminal Applications No. 589 of 2014 and 293 of 2014 do not survive and the same are disposed of. The Family Court shall decide the Interim Application uninfluenced by the observations made herein as also by the fact that the impugned order is modified and is treated as an ad-interim order.

9. All the contentions of the parties on merits are expressly kept open.

10. List the petitions for compliance on 26/03/2015.

(R.G.KETKAR, J.)