

Altaf Allarakh Memon	...	Petitioner
Vs.		
Rukhsana Haroon Memon	...	Respondent

Mr. B. M. Chatterji, Senior Advocate a/w. Mr. Vivek Salunkhe for
Petitioner.
Ms Shabnam Kazi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 16, 2015

P.C.:

Heard Mr. Chatterji, learned Senior Counsel for petitioner and Ms Kazi, learned Counsel for respondent. Rule. Ms Kazi waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 16.09.2014 passed by the learned I/c. Judge, 4th Family Court, Mumbai below exhibit-15 in Petition No.B-51/2013. By that order, the Family Court directed the petitioner to deposit Rs.12,000/- per month in the bank of respondent for maintenance of daughter and disposed of the application. The Family Court also directed that the order will take effect from the date of the application.

3. Mr. Chatterji submitted that respondent filed application on 25.06.2014 under Section 20 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act') for monetary relief read with Section 26 thereof. The said application is pending. Pending that application,

respondent took out application for directing the petitioner herein to deposit daughter Aliyas maintenance amount in the respondent's bank account. The said application was taken out on 23.07.2014. He submitted that the petitioner was not heard before passing the impugned order. The application was moved before the In-charge Court. The petitioner's Advocate, therefore, could not represent him. He submitted that the impugned order may be modified and be treated as ad-interim order and application at exhibit-15 may be restored to the file of the Family Court for deciding it afresh. All contentions of the parties including the jurisdiction of the Family Court to decide that application may be kept open.

4. On the other hand, Ms Kazi submitted that the application exhibit-12 was filed by the respondent on 25.06.2014 under Section 20 read with Section 26 of the Act for directing the petitioner to deposit daughter Aliyas school fees and school expenses. Application at exhibit-15 was filed on 23.07.2014 for directing the petitioner to deposit maintenance amount for daughter Aliyas. She submitted that this application was filed in view of paragraph 19 of the Petition instituted by the petitioner wherein it is asserted that the petitioner was regularly in touch with his daughter and also gave maintenance of Rs.15,000/- towards the upkeep of his daughter. She states that she has no objection for modifying the impugned order and for treating it as interim order.

5. In view thereof, by consent of the parties, rule is made absolute in the following terms:

- a. The impugned order dated 16.09.2014 below exhibit-15 is modified and shall be treated as ad-interim order;
- b. The modified order shall take effect from the date of application i.e. 23.07.2014;

- c. Application dated 23.07.2014 at exhibit-15 is restored to the file of the Family Court for deciding it afresh and in accordance with law;
- d. All the contentions of the parties on merits including the issue of jurisdiction are expressly kept open;
- e. It will be open to the petitioner to point out the amount paid by him under the impugned order;
- f. The Family Court is requested to decide the application exhibit-15 within 3 weeks from the date of appearance of the parties i.e. 13.03.2015.

(R. G. KETKAR, J.)

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