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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 98 OF 2016

1. Chandrakant s/o Pandurang Gofane,
Age: 57 years, Occ: Agri.,
2. Sangitabai w/o Pandurang Gofane,
Age: 52 years, Occ: Household,
3. Govind s/o Chandrakant Gofane,
Age: Major, Occ: Agri.,
4. Arvind @ Bhaiyya s/o Chandrakant
Gofane, Age: Major, Occ: Agri.,

All R/o Sonegaon,
Tq. & Dist. Osmanabad.

..APPLICANTS

VERSUS

1. Savita Chandrakant Gofane,
Age: 36 years, Occ: Household,
R/o. Sonegaon,
Tq. & Dist. Osmanabad.
2. Swami Chandrakant Gofane,
Age: 10 years, Occ: Nil,
Since Minor through his mother
i.e. Res. No. 1
Savita Chandrakant Gofane,
R/o. As above.

..RESPONDENTS

Mr A.N. Nagargoje, Advocate for applicants;
Mr S.S. Wakure, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 17th OCTOBER, 2016

(2)

ORAL ORDER :

Heard Mr. Nagargoje, learned Counsel for the applicants.

2. While questioning the order passed under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act'), Mr. Nagargoje, learned Counsel for the applicant would make following submissions :

(a) That, once the paternity of respondent No. 2 child was denied, the Court should have gone into depth of the said matter by conducting inquiry so as to find out the truth having regard to the defence of denial of relationship.

(b) Admittedly, based on the pleadings in the complaint under D.V. Act, the marriage with respondent No. 1 herein is claimed to be subsequent to subsistence of first marriage of the applicant No. 1 and in view of the judgment of the Apex Court

(3)

in the matter of **Indra Sarma vs. V.K.V. Sarma** reported in **(2013) S.C.C. 755**, the present respondents cannot be held to be entitled for the benefits of the D.V. Act.

3. It is required to be noted herein that learned Magistrate has passed order granting compensation, residential arrangement and maintenance of Rs.2000/- per month to respondent No. 1 and Rs. 1,500/- per month to respondent No. 2, which was confirmed in appeal at the behest of present applicants which preferred under Section 29 of the D.V. Act.

4. Apart from above, the issue of paternity was in fact sought to be gone into by the Courts below, however, both the Courts have concurrently held against the present applicants as they have not co-operated with the judicial proceedings so as to find out the truth qua denial of relationship.

(4)

5. Though Mr. Nagargoje, learned Counsel for the applicants is right in pointing out the judgment of the Apex Court in the matter of **Indra Sarma** (supra), however, it is required to be taken note of the fact that original applicant No. 2 Swami, who pleaded to be son born out of second marriage of the present applicant No. 1, is mentally retarded. He is required to be maintained and substantial amount is regularly to be incurred on his upbringing and maintenance.

6. In the factual back ground narrated herein above and having regard to the fact that both the Courts below have concurrently recorded findings of facts in the present application, in my opinion, no case for interference is made out. As such, criminal application fails and stands dismissed.

(N.W. SAMBRE, J.)

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