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

**CRIMINAL WRIT PETITION NO.596 OF 2016
WITH
CRIMINAL APPLICATION NO.5189 OF 2016**

Prashant Jaywantdas Bairagi
Age : 23 years, Occu. Labour,
R/o Pardeshipura,
Tq. & Dist. Nandurbar

..PETITIONER

VERSUS

Mohini Prashant Bairagi,
Age : 25 years, Occu. Household,
R/o Gandhi Chowk Chelipura,
Near Balaji Mandir, Aurangabad,
Tq. & Dist. Aurangabad

..RESPONDENT

Mr Rakesh N. Jain,, Advocate for petitioner;
Mr Mahesh B. Ubale, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 20th September, 2016

ORAL ORDER :

For the reasons stated in the application and in view of no objection granted by the respondent, Criminal Application No.5189 of 2016, for restoration stands allowed. The order dated 2nd September, 2016, dismissing the petition for want of prosecution, is set aside.

2. With the consent of the parties, the matter is taken out for final disposal at admission stage.

(2)

3. Learned Judicial Magistrate First Class, Aurangabad, pursuant to the provisions of Protection of Women from Domestic Violence Act, 2005, had ordered payment of maintenance of Rs.5,000/- per month in PWDVA No.131 of 2014, with effect from 3rd May, 2014. The considerations for ordering payment of maintenance were, that the present petitioner is able bodied person and assuming that he is a daily wager, the monthly income could be worked out at Rs.7,500/- per month.

4. The petitioner – husband, feeling aggrieved thereby, preferred PWDVA Appeal No.40 of 2016 before the learned Sessions Judge and the learned Additional Sessions Judge, Aurangabad passed the impugned order on 12th April, 2016, granting stay to the recovery, subject to deposit of 50% amount of arrears of maintenance with further order to continue to pay Rs.3,500/- per month towards maintenance.

5. The conditions as are incorporated in the order of stay are questioned in the present petition, on the ground that those are unreasonable as monthly income of the petitioner is to the extent of Rs.6,000/-. Learned Counsel appearing on behalf of the petitioner then would urge that a finding should have been recorded by the learned Magistrate *qua* the monthly income of the petitioner and then only an order awarding maintenance, particularly the quantum, should have been passed. He would urge that in view of pendency of the appeal, there should have been blanket stay to the order passed by the Magistrate awarding maintenance.

(3)

6. While resisting the above submissions, learned Counsel appearing on behalf of the respondent would urge that the amount of Rs.3,500/- as is directed to be paid towards maintenance is for the respondent – wife and her minor son. He would then urge that the learned Court below has considered the minimum income as could have been derived by the petitioner by undertaking occupation of daily wager. He would submit that no case for interference in the revisional jurisdiction is made out.

7. Having bestowed my thoughts to the submissions made, it is required to be noted that the present writ petition is preferred against an interim order of protection passed by the learned Magistrate. What is ordered to is the condition of stay i.e. payment of maintenance of Rs.3,500/- per month, during pendency of the appeal under the provisions of Protection of Women from Domestic Violence Act, 2005. It is required to be noted that the petitioner had not disclosed his income during the proceedings before the learned Trial Court and as such, the Trial Court was required to consider minimum income of the petitioner as a daily wager. The Trial Court as such proceeded to pass an order of payment of maintenance of Rs.5,000/- per month, which in any case, appears to be exorbitant. Be that as it may, since the appeal is pending before the learned Additional Sessions Judge, who has already granted solace to the petitioner, to the extent of directing him to pay Rs.3,500/- per month towards maintenance, during the pendency of the appeal, in my opinion, no case for interference, in exercise of extra-ordinary jurisdiction is made out.

(4)

8. In view thereof, Criminal Writ Petition fails and stands rejected.

(N.W. SAMBRE, J.)

amj