

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2185 OF 2014
IN
FIRST APPEAL NO.743 OF 2013**

Meena Vasant Zagde

..Applicant

Vs.

Vasant Dharmaji Zagde

..Respondent

Mr. M. A. Patil for the Applicant

Mr. S. B. Shetye for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 7th JULY, 2016

P.C.

1 The above Civil Application has been filed for the following relief:
(a) that this Hon'ble Court be pleased to issue appropriate order and for direction and be pleased to direct the Respondent to pay maintenance of Rs.7000/- per month in favour of the Applicant, during the pendency and final disposal of the above Family Court Appeal No.131 of 2012, in the interest of justice.

2 The above First Appeal takes exception to the judgment and order dated 24-7-2012 passed by the Learned Principal District Judge, Ratnagiri, by which order, the Petition for divorce filed by the Respondent herein under the Special Marriage Act came to be allowed and resultantly a declaration came to be issued that the marriage between the Appellant and the Respondent stands

dissolved from the date of the order. In so far as the said impugned order dated 24-7-2012 is concerned, it is required to be noted that in paragraph 41 of the said order, the Trial Court has observed as to why it is not inclined to pass any order of alimony to the Applicant herein at the said juncture. This was in terms of the mandate of Section 37 of the said Special Marriage Act. It is required to be noted at this stage that pending the proceedings before the Trial Court no application for maintenance pendant lite was filed by the Applicant.

3 It is required to be noted that the Applicant had also filed proceedings under the Domestic Violence Act for protection both in so far as residence and monetary protection. In so far as the residential protection is concerned, it seems that the Respondent herein had taken a premises on rent and had offered it to the Applicant. However, it seems that the Applicant did not go to reside in the said premises. In so far as the monetary protection is concerned, by an interim order passed in the said proceedings, the Applicant was granted maintenance @ Rs.4000/- p.m. pending the said proceedings. The said proceeding ultimately culminated in the order dated 1-1-2015 passed by the Learned Judicial Magistrate First Class, Ratnagiri, by which order the application was dismissed as a whole and the reasons why both the residential as well as monetary protection is not required to be granted to the Applicant are mentioned therein. In so far as the monetary protection is concerned, in

the said domestic violence proceedings it has come on record that the Applicant had sold of an immovable property out of which the proceeds were deposited in the account of the Applicant's relative but the Applicant did not given any explanation as to why the amount was deposited in the account of her relative. It has also come on record that the Applicant's son runs a restaurant by name Amantran near Mahalaxmi Temple, Kolhapur which the Applicant feigned ignorance of which the court felt hard to accept on the ground that it is impossible to believe that the Applicant is not aware of what her son is doing. It is on the said basis that even monetary protection was denied to the Applicant resulting in the domestic violence proceedings being dismissed by the Learned Judicial Magistrate First Class, Ratnagiri.

4 The Applicant it seems had not challenged the order dated 1-1-2015, atleast the Learned Counsel appearing on behalf of the Applicant has ignorance of the same. The Learned Counsel appearing on behalf of the Applicant seeks to lay emphasis on Section 37 of the said Act to justify the filing of the instant Application for maintenance pending the above First Appeal and placed reliance on the judgment of the Learned Single Judge of this Court in the matter of **Ramchandra Anand Suryawanshi Vs. Kalindi Ramchandra Suryawanshi**¹. In the said context, it is required to be noted that the mandate of Section 37 has to be followed at the stage of passing of the decree in the Marriage Petition. This has been done by the Trial Court by

1 1991(2)BOM C.R.307

holding that the Trial Court does not deem it appropriate to fix any alimony for the Applicant. Hence the Trial Court has carried out the exercise as mandated by Section 37 and for the reasons mentioned in the impugned order which is the subject matter of the above First Appeal has rejected the fixation of permanent alimony. The judgment in Ramchandra Suyawanshi's case has therefore no application. If the Applicant succeeds in the above First Appeal and this Court deems it appropriate to fix permanent alimony, it would be only in the said circumstance that the Applicant would be entitled to permanent alimony. Hence no relief can be granted to the Applicant in the above Civil Application which is accordingly rejected.

[R.M.SAVANT, J]