

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.3928 OF 2015**

**Mrs. Deepali Deepak More**  
**Alias Deepli Sahebrao Desai** : **Petitioner.**  
**Versus**  
**Mr. Deepak Santosh More and anr.** : **Respondents.**

**Mr. S D Patil i/by Ms. Anusha P Amin for the Petitioner.**  
**Mr. N A Mogre for the Respondent.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 30<sup>th</sup> March 2016**

**P.C.**

1           The writ jurisdiction of this court is invoked against the order dated 04/09/2015 passed by the learned 27<sup>th</sup> Joint Civil Judge Junior Division and JMFC Pune by which order the application filed by the Petitioner-wife being Exhibit 80 came to be rejected.

2           The said application (Exhibit 80) was filed by the Petitioner-wife seeking a direction to the employer of the Respondent-husband to attach the salary of the Respondent-husband and the attached salary of the Respondent be directed to be deposited in the bank of the applicant i.e. the Petitioner herein. The said application (Exhibit 80) was preceded by the application (Exhibit 9) filed by the Petitioner-wife for interim maintenance of Rs.30,000/- per month for herself and Rs.20,000/- per month for her son Dhairya and also for direction to pay EMI of Rs.28,000/- per month of the home loan as also the

direction to handover the things mentioned in paragraph 9 of the application and for protection order. The said Misc. Application was filed under the Domestic Violence Act. In so far as the said application (Exhibit 9) is concerned, the same came to be partly allowed by the learned Magistrate to the extent mentioned in the operative part of the order dated 21/09/2013. The relevant clauses of the operative part of the said order dated 21/09/2013 are reproduced herein under for the sake of ready reference :-

- “1] The application is partly allowed.
- 2] The opponent is directed to pay Rs.40,000/- pm to the applicant 9it includes the expenses of son Dhairiya and applicant herself) from the date of application till final decision of the main application.
- 3] The opponent is hereby prohibited from doing any act of domestic violence against the applicant till final decision of the main application.
- 4] The rest of the prayers are hereby rejected.”

3           Hence the prayer for direction to pay the EMIs of the home loan was rejected by the learned Magistrate. Against the said order dated 21/09/2013 two Appeals were filed, one by the Petitioner-wife being Criminal Appeal No.526 of 2013 and one by the Respondent-husband being Criminal Appeal No.516 of 2013. The Appeal filed by the Petitioner-wife was partly allowed whereas the Appeal filed by the Respondent-husband was dismissed with cost. The operative part of the order passed by the learned Sessions

Judge in the said Appeals is reproduced herein under for the sake of ready reference :-

- “(1) Cri. Appeal No.516 of 2013 is hereby dismissed with costs
- (2) Cri. Appeal No.526 of 2013 is hereby partly allowed with proportionate costs;
- (3) The interim maintenance order dated 21.09.2013 is hereby modified as under :-
  - (a) The interim maintenance order of paying Rs.40,000/- p.m. for the applicant No.1 and 2 from the date of the application passed by the learned J.M.F.C. Court on 21.09.2013 is hereby confirmed.
  - (b) The appellant husband is directed to contribute Rs.18,000/- p.m. towards E.M.I. Of S.B.I. Bank and the balance amount of E.M.I. shall be borne by the respondent wife”

4           Hence the learned Sessions Judge partly allowed the claim for EMIs to the extent mentioned in clause 3(b) of the operative part. The said order dated 17/09/2014 was taken exception to by the Respondent-husband by way of Criminal Writ Petition No.4275 of 2014. The said Writ Petition came to be disposed of by a learned Single Judge of this Court M.L.Tahiliyani (as His Lordship then was) by the order dated 07/01/2015. The relevant excerpt of the said order dated 07/01/2015 is reproduced herein under for the sake of ready reference :-

“The order of the learned Magistrate is modified as under :-

- (a) Interim maintenance to be paid by the petitioner to respondent No.1 shall be Rs.25,000/- per month. As

far as the order with regard to payment of E.M.I. is concerned, the same is maintained.

- (b) It is further order that the arrears shall be paid by the petitioner within a period of 30 days from today. In default, it is always open for the respondent No.1 to apply for extension of the order before the trial Magistrate.”

5           The Petitioner thereafter filed an application (Exhibit 68) for implementation of the order passed by this Court i.e. M.L. Tahiliyani, J. which came to be disposed of on the ground that certified copy of the order passed by this Court dated 07/01/2015 was not annexed. In view thereof the Petitioner-wife thereafter filed the application (Exhibit 80) for the self same reliefs viz. for seeking a direction to the employer of the Respondent-husband to attach the salary of the Respondent-husband and the attached salary of the Respondent be directed to be deposited in the bank of the applicant i.e. the Petitioner herein. The said application (Exhibit 80) was therefore for the implementation of the order dated 07/01/2015 passed by this Court in the matter of payment of maintenance as also in the matter of payment of EMIs for the flat in question. In so far as the payment of maintenance is concerned, in view of the payments made in the interregnum by the Respondent-husband, the Trial Court i.e. the learned Magistrate did not deem it appropriate to grant any relief. In so far as the amount towards the EMI is concerned in respect of which the amount of Rs.4,68,000/- was claimed by the Petitioner-wife, the Trial Court i.e. the learned Magistrate in view of the order dated 07/01/2015

passed by this Court, rejected the said claim. The said claim seems to be rejected on the ground that in the order dated 07/01/2015 the learned Single Judge of this Court has observed to the following effect :-

“As far as the order with regard to payment of E.M.I. is concerned, the same is maintained.”

As indicated above it is the said order dated 04/09/2015 passed by the Trial Court which is taken exception to by way of the above Petition.

6           It was the submission of the learned counsel appearing on behalf of the Petitioner-wife that since the challenge in the said Writ Petition No.4275 of 2014 was to the order passed by the learned Sessions Judge, the operative part of the said order would necessarily have to be read in the context of the order having been passed by the learned Sessions Judge and not by the learned Magistrate as has been recorded in the said order. It was the contention of the learned counsel for the Petitioner-wife that the judgment as a whole would have to be considered whilst interpreting it. In support of the said contention, the learned counsel for the Petitioner sought to place reliance on the judgment of the Apex Court reported in (2005) 4 SCC 772 in the matter of **Ramesh Chand Daga v/s. Rameshwari Bai.**

7           Per contra, the learned counsel appearing for the Respondent-husband Shri Mogre would contend that since in the opening line of

paragraph (8) the word “Magistrate” has been referred, it would necessarily mean that the order of the learned Magistrate is modified by the learned Single Judge of this Court. It was also the submission of the learned counsel for the Respondent Shri Mogre based on the observations made in paragraph 8 of the order of the learned Magistrate 21/09/2013 that it would be open for the Petitioner-wife to file a fresh application for part payment of EMI by the Respondent-husband, and if the Petitioner files a fresh application, the same can be directed to be decided by the learned Magistrate without being influenced by the earlier adjudication.

8           Having heard the learned counsel for the parties, I have considered the rival contentions. In the instant case, as indicated above, the relief in respect of the EMI sought by the Petitioner-wife has been rejected by the learned Magistrate on the basis of the order dated 07/01/2015 passed by a learned Single Judge of this Court in Writ Petition No. 4275 of 2014. No doubt in the said Writ Petition the challenge raised was to the order passed by the learned Sessions Judge in the two Appeals which were filed one each by the Petitioner and the Respondent. However, whilst concluding his order, the learned Single Judge of this Court has paraphrased the operative part by observing that the order of the learned Magistrate is required to be modified. It is required to be noted that in so far as maintenance is concerned, the learned Magistrate had granted maintenance of Rs.40,000/- to the Petitioner

which has been modified by the learned Single Judge of this Court to Rs.25,000/- per month having regard to the fact that the Petitioner is earning Rs.17,000/- per month. In so far as the claim of EMI is concerned, the learned Single Judge of this Court has observed to the following effect :-

“As far as the order with regard to payment of E.M.I. is concerned, the same is maintained.”

It is required to be noted that the learned Magistrate has not allowed the claim of EMI as sought by the Petitioner in the said Application (Exhibit 9). However, the said claim for EMI was partly allowed by the learned Sessions Judge who directed the Respondent herein to contribute Rs.18,000/- per month. However, since the learned Single Judge has in the opening line of paragraph 8 referred to the order of the learned Magistrate, it would necessarily imply that the learned Single Judge has confirmed the order of the Magistrate in respect of EMI viz that the Petitioner was not entitled to any relief in that regard. Though there can be said to be incongruity in the order in the light of the absence of any reference being made to the fate of the order passed by the Sessions Court but in the light of the fact that the said paragraph 8 has been paraphrased by the learned Single Judge of this Court by stating that the order of learned Magistrate is required to be modified by necessary implication, it would have to be held that the order of the learned Magistrate to the extent mentioned in the operative part of the order dated 07/01/2015 of the learned Single Judge of this Court stood set aside. It is required to be

noted that the Petitioner did not apply for seeking clarification of the order dated 07/01/2015 passed by M.L.Tahiliyani, J. whilst he was available.

9           To get over the piquant situation arising out of the non-availability of M.L.Tahiliyani, J. on account of his appointment as the Hon'ble Lok Ayukta of Maharashtra, it was suggested that the Petitioner may now apply for the grant of part payment of EMI by the Respondent-husband by making a fresh application having regard to the observations made by the learned Magistrate in paragraph 8 of his order. However, the said course of action was not acceptable to the learned counsel for the Petitioner-wife.

10           In my view, no case for interference in the writ jurisdiction of this Court is made out. However, it would always be open for the Petitioner-wife to file an application for part payment of the EMI, if so advised. If any such application is filed, needless to state that, the same would be tried on its own merits and in accordance with law. With the observations as aforesaid the Writ Petition is dismissed.

**[R.M.SAVANT, J]**