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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4162 OF 2013.

Shyam Bhiva Jadhav	]
age: 70 years, Indian Inhabitant	].. <u>Petitioner</u>
Occupation: Retired, residing at & Post Bhedas	] Original
Tal. and District Sangli	] respondent.

V/s.

1. The State of Maharashtra	]
	]
2. Mrs. Shakuntala Shyam Jadhav	]... <u>Respondents.</u>
Adult, Indian inhabitant,	] Respondent
residing at: Datta Krupa Co-op Hsg Soc.	] No.1
125/4123, Nehru Nagar, Kurla (E)	] Orig. complainant.
Mumbai 400 024	]

Mr. M.G. Shukla, for the Petitioner.
Mr. O. B. Molankar, for respondent No.2.
Mrs. Anamika Malhotra, APP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JANUARY, 2016.

ORAL JUDGMENT.: [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This writ petition takes an exception to the concurrent finding and order passed by the trial Court and the Revisional Court, directing the petitioner to pay maintenance at the rate of Rs.13,000/- per

month to respondent No.2.

2. The petitioner is the husband of respondent No.2. On account of disputes and marital discord between the parties, respondent No.2 is residing separately. She has filed application before the trial Court under Section 12 of the Domestic Violence Act seeking various reliefs thereunder. On 27th June, 2012, she filed an application at Exh.15, seeking relief to the effect that the petitioner husband be directed to pay monthly compensation/rent towards residential premises for the applicant as received from the builder at the rate of Rs.13,000/- per month from January, 2012 onwards till final hearing and disposal of the said case. In support of said prayer, respondent No.2 wife set out a case that shared house i.e. one room occupied by her, her husband and their daughter was part of housing society. This property was to be developed by builder. Hence occupants of the society building were shifted elsewhere. The builder used to pay them amount of rent which the occupant had to pay for alternate accommodation towards rent. The petitioner husband used to receive Rs.13,000/- per month from the builder. As suddenly builder stopped paying the said amount, respondent wife was constrained to file application before the trial Court, requesting the builder to pay said amount to the society and the society in turn to

make payment to her. The trial Court, after hearing both parties was pleased to accede to the request of respondent wife and directed the petitioner husband to make payment of Rs.13,000/- paid by the builder to the society and the society in turn to make payment of the said amount to respondent No.1.

3. This order of the trial Court was challenged by the petitioner husband by preferring Criminal Appeal No.521 of 2012 before the Sessions Court and the Sessions Court after hearing both the parties, vide its order dated 30th October, 2013, confirmed the order of the trial Court and hence being aggrieved thereby, present writ petition is preferred.

4. At this stage it may be stated that the petitioner husband is of 70 years of age whereas respondent No.2 wife is of 68 years and hence several attempts were made by both the trial court and the appellate Court; and also by this Court to settle the matter amicably. However, it was of no use. Despite efforts made by the Mediator Judge also, matter could not be settled amicably and hence this writ petition has to be decided on merits.

5. As per submission of learned counsel for the petitioner husband, considering the age of the petitioner, who is at the fag end of the life running age of 70 years and having no source of income at all,

amount of Rs.13,000/- per month as awarded by the trial Court to respondent wife, is totally unjustified and arbitrary. No ground or basis is given for awarding such huge amount to respondent wife. The petitioner is having absolutely no source of income, unable to maintain himself. He has to depend on his nephew and in such situation, according to learned counsel for petitioner, the impugned order of the trial Court which is confirmed by the appellate court, without giving sufficient reasons is required to be quashed and set aside.

6. Per contra, learned counsel for respondent No.2 wife has supported the order of the trial Court and the appellate Court by submitting that just as petitioner is an old person, similarly respondent wife is also old person. She is having no source of income. Builder was paying at least an amount of Rs.13,000/- towards rent of alternate accommodation. At the instance of petitioner, builder had stopped paying that amount also. Hence she will be rendered shelter-less. Therefore, according to him, the trial Court, after considering all the facts and circumstances of the case, has rightly awarded said amount to respondent wife. Said order is confirmed by the appellate Court by giving valid reasons and hence in this petition no interference is warranted.

7. At the outset itself, it has to be stated that respondent No.2 is an old lady having no independent source of income. At least she was getting an amount of Rs.13,000/- towards rent of alternate accommodation from the builder. As a result of the letter written by petitioner and his constituted attorney his son Ganesh, said payment was stopped all of sudden. Naturally in such situation respondent No.2 was bound to become shelter-less, as she has no income to pay rent of alternate accommodation which she was entitled to get. Hence, the trial Court, has rightly held that she must get this amount of Rs.13,000/- per month which the builder was to pay to society, towards rent of alternate accommodation of respondent. There was absolutely no reason for the petitioner husband or his constituted power of attorney his son Ganesh, to request the builder to stop payment of said amount.

8. Moreover, the evidence on record shows that the petitioner husband is having his own landed property at Sangli. Extract to that effect is produced on record alongwith photographs to show that said premises are given on rent. Therefore it is not the case that the petitioner is not having any source of income at all.

9. Thirdly and most importantly, the order of passed by the trial Court is an interim order and rights and liabilities of the parties are

not decided finally. They will be decided after the proceedings are conducted and the evidence is led by both parties. In such situation, the facts and circumstances on record justify the order passed by the trial Court and confirmed by the appellate Court. Writ petition is, thus, devoid any merits and therefore stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

CERTIFICATE

Certified to be true and correct copy of the
original signed judgment.