

FARAD CONTINUATION SHEET No.
 IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL WRIT PETITION NO. 4817 OF 2014

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Petitioner present in person.

Mr. Wasim Samlewale i/by U.R.Mankapure for Respondent No.2.

Mrs. S.V.Gajare, APP for the State

CORAM : A.S.GADKARI, J.

DATE : 22nd March, 2016

PC.

By the present petition filed under Article 227 of the Constitution of India, the petitioner, husband has challenged the order dated 18.10.2014 passed below Exh.5 in Criminal M.A.No.196/2014 by the Judicial Magistrate First Class, Vita, thereby granting interim maintenance to the Respondent no.2-wife. The said order dated 18.10.2014 was passed under Section 23 of the Protection of Women From Domestic Violence Act, 2005.

2) At the out set, the learned counsel for the respondent No.2 raised a preliminary objection about the maintainability of the present petition. He submitted that the petitioner, without exhausting the alternate remedy of Appeal, available under Section 29 of the said Act has directly filed the present petition and therefore the present petition may not be entertained.

3) Under Section 29 of the Protection of Women from Domestic Violence Act, 2005 a substantive remedy by way of an Appeal has been provided. In view of the guidelines laid down by the Supreme Court in the case of Shalini S.Shetty vs.Rajendra S.Patil reported in (2010) 8 SCC 329, a writ petition under Article 227 of the Constitution of India may not be entertained where an alternate statutory mode of redressal has been provided. The Supreme Court has further held that the same would also operate as restraint in the

exercise of the power of the High Court.

4) In view of the above, the petitioner who appears in person seeks leave to withdraw the present petition with liberty to file an appeal before the appropriate Court. Leave and liberty granted. Petition is disposed off as withdrawn.

5) It is needless to mention here that the period consumed in pursuing the present petition shall be taken into consideration by the concerned Court as contemplated under Section 14 of the Limitation Act, if the petitioner prefers Appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

6) Petition is disposed off in the aforesaid terms.

(A.S. GADKARI, J.)