

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLN. (O) NO.222 OF 2016

IN

FAMILY COURT APPEAL NO. 312 OF 2014

Sudhakar S/o Kisan Gaikwad

-vs-

Smt.Jyotsna W/o Sudhakar Gaikwad

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. M.B.Agasti & Mr. S.K.Bansod, counsel for the applicant/respondent.
Mr. D.M.Kale, counsel for the non-applicant/appellant.

CORAM : SMT. VASANTI A. NAIK &
A.S.CHANDURKAR, JJ.

DATE : 01.03.2016.

By this civil application, the applicant seeks the modification of the order dated 30/06/2014.

On hearing the learned counsel for the parties on 30/06/2014, this Court had stayed the judgment, dated 05/04/2014 only on the condition that the appellant deposits 50% of the arrears of maintenance at the rate of Rs.4,000/- per month including the amount of Rs.2,000/- that was liable to be paid to the respondent in the proceedings under the provisions of the Protection Of Women From Domestic Violence Act, 2005.

The said order was confirmed by the order dated 20/03/2015 and the civil application filed by the appellant for stay of the judgment and decree was disposed of.

It is submitted on behalf of the applicant/respondent that the order dated 30/06/2014 needs to be modified, as an amount of Rs.2,000/- was not paid by the appellant to the respondent towards maintenance in terms of the order passed in the proceedings under the provisions of the Protection Of Women From Domestic Violence Act, 2005 and the said amount was liable to be paid to the respondent only for securing an alternate accommodation. It is stated that the amount of Rs.2,000/- is directed to be paid to the applicant/ respondent only

towards the accommodation and the respondent would not be able to survive with an additional amount of Rs.2,000/-, if the amount of Rs.4,000/- is inclusive of the amount directed to paid under the provisions of the Act of 2005.

Shri Kale, the learned counsel for the appellant/non-applicant opposes the prayer made by the applicant/respondent by referring to the affidavit-in-reply tendered in the Court today. It is stated that the circumstances have not changed after 30/06/2014 and, therefore, there is no reason for modification/clarification of the order dated 30/06/2014.

On hearing the learned counsel for the parties and on a perusal of our earlier interim orders, we find that an impression was gathered by us at the time of passing of the *ad interim* order on 30/06/2014 that an amount of Rs.2,000/- was liable to be paid to the applicant/respondent towards maintenance in the proceedings under the Act of 2005. We, however, find on a reading of the order passed in the proceedings under the Act of 2005 that the said amount is directed to be paid to the applicant/respondent for securing the alternate accommodation. If that is so, the applicant would not be able to survive with additional amount of Rs.2,000/-, as the non-applicant/appellant is directed to pay only a sum of Rs.4,000/- to the applicant/respondent during the pendency of the proceedings.

Hence, for the reasons aforesaid, we modify the order dated 30/06/2014 and direct the appellant/non-applicant, who is working as a Ticket Collector in the Central Railways, to pay a sum of Rs.6,000/- per month to the applicant/respondent from January, 2016. It is needless to state that the said amount would be inclusive of the amount that is liable to be paid to the applicant/respondent in the proceedings under the Act of 2005 and under Section 18 of the Hindu Adoption And Maintenance Act. It is made clear that the order of stay would be governed by the aforesaid condition. The civil application is disposed of accordingly.

JUDGE

JUDGE