

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 741 OF 2017

1. Lakhan Gopal Agrawal
Age: 25 years, Occu.: Business,
R/o Dargah Road, Manas Nagar,
Parbhani.
 2. Gopal Nandlal Agrawal
Age: 55 years, Occu.: Business,
R/o Dargah Road, Manas Nagar, Parbhani.
 3. Premlata w/o Gopal Agrawal
Age: 50 years, Occu.: Business,
R/o c/o Deepak Agrawal, Marwad Galli,
Bori, Tq. Jintur, Dist. Parbhani.
 4. Jyoti w/o Deepak Agrawal
Age: 45 years, Occu.: Household,
R/o c/o Deepak Agrawal, Marwad Galli,
Bori, Tq. Jintur, Dist. Parbhani.
 5. Mamta w/o Pravin Kamad
Age: 32 years, Occu.: Household,
R/o Balaji Galli, Jalna.
 6. Pravin Nandkishor Kamad
Age: 35 years, Occu.: Business,
R/o Balaji Galli, Jalna.
 7. Alka w/o Vivek Agrawal
Age: 30 years, Occu.: Household,
R/o Marwad Galli, Hingoli.
 8. Vivek Gopal Agrawal
Age: 33 years, Occu.: Business,
R/o Marwad Galli, Hingoli.
- ..PETITIONERS

VERSUS

1. Mayuri w/o Lakhan Agrawal
Age: 25 years, Occu.: Nil,
R/o Dargah Road, Manas Nagar,
Parbhani.
At present R/o
c/o Gauurishankar Devkinandan Agrawal,
Hariprasad Mangal Karyalaya,
Near GPO Parbhani, Tq. & Dist. Parbhani.
2. Ritika d/o Lakhan Agrawal
Age: 3 years, Occu.: Minor,
U/g of her natural mother R/No.1.

..RESPONDENTS

....
Mr. V.A. Bagdiya, Advocate for petitioners.
Mr. V.R. Jain, Advocate for respondents.

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CORAM : V.L. ACHLIYA, J.
DATED : 19th SEPTEMBER, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Counsel for the parties.

2. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail. In short, it is the contention of the learned Counsel for the petitioners that the respondents had filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking interim maintenance. Without granting an

opportunity of filing the say, the application came to be decided in favour of the respondents and the petitioners were directed to pay interim maintenance @ Rs.20,000/- per month till disposal of the main application. Being aggrieved, the petitioners had preferred appeal before the Sessions Court, Parbhani. By the judgment and order dated 05th May, 2017, the Additional Sessions Judge, Parbhani pleased to allow the appeal and set aside the impugned order dated 05th March, 2016. It is the contention of the learned Counsel for the petitioners that though the learned Additional Sessions Judge had set aside the order and directed the parties to appear before the Trial Court on 10th June, 2016 and permitted the petitioners to file say and directed the learned Judge of the trial Court to decide the application afresh on its own merits without influenced by the earlier order. It is contended that inspite of setting aside the order, the learned Additional Session Judge by same order directed the petitioners to pay the arrears of the ad-interim maintenance granted @ Rs.20,000/- per month and further continue to pay the maintenance at same rate before 10th day of each month till decision of Exhibit 5. Being aggrieved, the petitioner has preferred this petition.

3. Heard the learned Counsel for the petitioners and the respondents and perused the impugned order. Having appreciated the

submissions advanced in the light of the order passed, I am of the view that the impugned order i.e. Clause 2(b) of the order is not sustainable in law. The operative part of the order reads as under:-

- “1. *The appeal is hereby allowed.*
2. *The order passed by the Trial Court below Exh.5 in PWDA No. 16/2016, dated 05.03.2016 is hereby set aside on the following conditions.*
 - (a) *Respondents are further directed to file their say on Exh. 5 and to the main petition before the Trial Court on 10.06.2017.*
 - (b) *Respondents are further directed before filing the say, they shall clear the outstanding as an arrears of ad-interim maintenance due against them as per order of the Trial Court and they shall continue to deposit Rs.20,000/- per month on or before 10th of each month, till decision of Exh.5. Failure of which, the Trial Court can pass appropriate order.*
3. *Trial Court to decide Exh.5 on it's own merit without being impress by the observations made by this Court.*
4. *The copy of this judgment along with record and proceeding, be transmitted to the Trial Court.*
5. *Parties are directed to appear before the Trial Court on 10.06.2017.”*

4. Perusal of the order reveals that the Appellate Court has come to the conclusion that the order passed by the Court below without

affording an opportunity to file say to application Exhibit 5, is not sustainable in law. By the judgment delivered in the matter, the Appellate Court has set aside the order dated 05th March, 2016 passed in PWDA No. 16 of 2016 by the Judicial Magistrate First Class, Parbhani granting maintenance @ Rs.20,000/- per month. It is rather surprising that inspite of setting aside the order, the learned Additional Sessions Judge has directed the implementation of same order pending disposal of the application Exhibit 5. In my view, once the order is set aside, the Appellate Court was not justified in passing such order i.e. clause 2(b) of the judgment and order dated 05th May, 2017. Plain reading of Section 23 of the said Act spell out that the power to grant interim maintenance necessarily an exercise to be made by the Trial Court. Once the order passed by the trial Court found to be not sustainable and decided to set aside by the Appellate Court, the implementation of same order should not have been ordered by the appellate Court. In fact, in the ends of justice and to protect the interest of the respondents, while remanding the matter, the appellate Court could have passed an order to decide the application in time bound manner.

5. In this view, I am inclined to pass the following order :-

- i) Writ Petition is partly allowed.

- ii) Clause “2(b)” of the operative part of the order passed by the Appellate Court is set aside.
- iii) Parties are directed to appear before the Trial Court on 29th September, 2017. If the petitioners have not filed say, then same be filed on 29th September, 2017.
- iv) The Trial Court is directed to hear the parties and decide the application as expeditiously as possible and preferably before 05th October, 2017 without influenced by earlier order.
- v) Parties to act upon the authenticated copy of this order.
- vi) Rule made partly absolute.

(V. L. ACHLIYA, J.)

SSD