

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

CRIMINAL WRIT PETITION NO.1059 OF 2016

Arun s/o Balasaheb Yengure
Age: 41 years, Occu.: Contractual,
Worker, Residing presently at M-504,
Dnyaneshwar Housing Society,
Yashwantrao Chavan Nagar,
Satara Road, Pune – 411 043. ..Petitioner

VERSUS

Smita w/o Arun Yengure
Age: 32 years, Occu.: Service,
Residing at c/o.Mr.Sudhir Vasantryao
Mandavkar, Block No.203, Shree Apartment,
Sanmitra Colony, Opposite Rokade
Hanuman Temple, Workshop Corner,
Nanded. ..Respondent

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Advocate for Petitioner : Mr.Hemant Surve
Advocate for Respondent : Mr.H.V.Tungar

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CORAM : PRAKASH D.NAIK, J.

RESERVED ON : 30th NOVEMBER, 2017
PRONOUNCED ON : 22nd DECEMBER, 2017

JUDGMENT: -

1) Petitioner is the husband of respondent wife. They were married on 14.12.2006. The petitioner challenges

the order dated 23.6.2016 passed by the Principal Judge, Family Court, Aurangabad below Exh.5 in ER Petition No.355 of 2015.

2) The respondent had preferred an application under the provisions of the Protection of Women from Domestic Violence Act, 2005, before the Court of Judicial Magistrate First Class, Nanded, which was numbered as MCA No.100 of 2012. The said application was filed on 28.3.2012. The respondent had sought various reliefs including the relief for share in the property, protection against domestic violence and maintenance. There were orders passed by the Court about transfer of matrimonial matters between the parties to the Family Court, Aurangabad, by consent of both the parties. The proceedings were then transferred to the Family Court, Aurangabad, including the present application.

3) The proceedings under the Protection of Women from Domestic Violence Act, 2005, were challenged by the

parents of the petitioner before the High Court vide Criminal Application No.1944 of 2012. This Court vide order dated 5.2.2013, transferred the proceedings under the Protection of Women from Domestic Violence Act, 2005 from Judicial Magistrate First Class, Nanded to the Family Court, Aurangabad and the parties were directed to appear before the said Court. The family members of the petitioner have filed an application viz. Criminal Application No.2226 of 2013, which was decided by order dated 15.10.2013 wherein the petitioners were directed to approach the Family Court by preferring an application and directed the Court to decide whether case is made out for proceeding against the family members of the petitioner. The Family Court allowed the said application and the proceedings against other members of the petitioner were dropped vide order dated 28.4.2014.

4) Prior to transfer of the proceedings to the Family Court, the respondent had preferred an application for exparte interim monetary as well as residential reliefs

and protection order in Miscellaneous Criminal Application No.100 of 2012. The said application was allowed and by order dated 3.9.2012, the Court of learned Judicial Magistrate First Class, Nanded, restrained the opponents therein from causing the domestic violence to the applicant wife. The husband was directed to secure same level of alternate accommodation for the wife or to pay monthly rent of Rs.3,000/-. The opponents were restrained from communicating the applicant wife through any form of communications including personal, oral, written or telephonic contacts for giving threats to her. Notice was issued to the husband to show cause as to why exparte order should not be confirmed.

5) The petitioner appeared in the proceedings. The petitioner challenged the exparte interim order dated 3.9.2012 by preferring Criminal Revision Application alongwith an application for condonation of delay. The said application was numbered as 6819 of 2013. While deciding the said application, the Court observed that

the appeal would lie to the Court of Sessions, Nanded as contemplated u/s 29 of the Protection of Women from Domestic Violence Act, 2005. On perusal of the order dated 28.2.2014, it appears that the Court had observed that the proceedings filed by both the sides were transferred to the Family Court, Aurangabad. The applicant husband wants to challenge order dated 3.9.2012 passed by the Judicial Magistrate First Class, Nanded. The application was disposed of with liberty to prefer an appeal.

6) The petitioner preferred an appeal u/s 29 of the Protection of Women from Domestic Violence Act, 2005, to the Court of Sessions. An application for condonation of delay was also filed. The same was numbered as Miscellaneous Criminal Application No.13 of 2014. The said application was not attended by the Advocate for the petitioner and the same was dismissed by the Court.

7) The proceedings u/s 29 were numbered as

Miscellaneous Criminal Application No.13 of 2014. The same were not attended by the wife. Hence, by order dated 15.12.2014, the same were dismissed for default by the Family Court, Aurangabad. The respondent did not apply for restoration of said application. However, she claimed monetary action taking aid of interim order. She also initiated recovery proceedings for alleged outstanding as per interim order. The said proceedings were numbered as E.R. No.355 of 2015.

8) The petitioner appeared in the matter. He tendered objection to recovery proceedings. The objection petition was filed on the ground that the same was not maintainable for want of jurisdiction. The petitioner also claimed that he was remedy-less as the proceedings were dismissed for want of prosecution and that consequential recovery cannot be generated. The proceedings are primarily of civil nature. The objection was contested by the respondent. Reply was filed by respondent opposing the said application. The learned

Family Court vide order dated 23.6.2016 rejected the objection. Hence, the petitioner has approached this Court.

9) The learned counsel for the petitioner submits the objection application preferred by the petitioner was contemplated under Order XXI Rule 58 of the Code of Civil Procedure. The execution proceedings were not maintainable in law. The main application seeking relief under the Protection of Women From Domestic Violence Act, was dismissed for default and therefore the interim order cannot be implemented. In the said circumstances, the petitioner has remained remedy-less. The proceedings under the Protection of Women From Domestic Violence Act, were quasi civil in nature and therefore, the provisions of Order XXI Rule 58 of the Code of Civil Procedure are applicable. The Court failed to appreciate that it had no jurisdiction to entertain the recovery proceedings, what was transferred was only main application and there were no orders about transfer of any other rights. On

account of dismissal of the main proceedings, the respondent lost her right to claim the interim relief. The interim relief would merge in the final order and therefore execution does not survive. Though the provisions of the Protection of Women From Domestic Violence Act, permits furtherance of proceedings contemplated under the Code of Criminal Procedure, still the basic nature of the proceedings cannot be discarded. The aim of the Act is to provide civil rights to the aggrieved person. The proceedings are primarily civil in nature. The petitioner has relied upon the decision of this Court in the case of *Mangesh Sawant Vs. Minal Vijay Bhosale & Anr.* [2012(1) Bom.C.R. (Cri) 458].

10) The learned counsel for the respondent submitted that there is no substance in the submissions advanced by the petitioner. The Family Court has rightly rejected the objection application. The Family Court had jurisdiction to entertain the application for execution on account of transfer of the proceedings to the said

Court. The earlier orders passed by the Family Court merges into the proceedings, which were transferred to the said Court and therefore, the Court had power to entertain the execution application. The interim order was passed by the Court of Judicial Magistrate First Class on 3.9.2012. The petitioner is not complying the said order. Hence, the respondent was constrained to prefer an application for implementation of the order. The said application is pending since 2015. The petitioner had preferred an appeal challenging the order dated 3.9.2012, which has been dismissed for default. The petitioner did not pursue the said proceedings. Dismissal of the application preferred by the respondent for default would not wipe out the order dated 3.9.2012. It is submitted that the application for execution was not preferred u/s 12 of the Protection of Women From Domestic Violence Act. The Judgment relied upon by the petitioner is delivered in different context. The Court had considered whether an application u/s 482 would lie challenging the said proceedings u/s 12 of the

Protection of Women From Domestic Violence Act. The learned counsel placed reliance on the decision of this Court in the case of *Sachin Suresh Bodhale Vs. Sau.Sushma w/o Sachin Bodhale* [2015 All M.R. (Cri.) 3128].

11) I have perused the documents. The respondent had preferred an application u/s 12 of the Protection of Women From Domestic Violence Act on 28.3.2012. Interim order was passed on 30.9.2012. The petitioner has not complied the said order. The petitioner had preferred an appeal before the Sessions Court challenging the aforesaid order. The appeal was dismissed for default. The petitioner had not pursue the said proceedings. The proceedings under the Protection of Women From Domestic Violence Act were transferred to the Family Court by consent of both the parties. The Court therefore has power to entertain the application for execution. Section 28(1) of the Protection of Women From Domestic Violence Act provides for procedure of implementation of

the order wherein it is categorically stated that all the proceedings u/s 12, 18, 19, 20, 21, 22 and 23 and offence u/s 31 shall be governed by the provisions of Code of Criminal Procedure. The petitioner is avoiding payment of maintenance. The petitioner has therefore raised objection to the execution proceedings, which has been rightly rejected by the Family Court.

12) The respondent in her application for execution of the interim order has stated that the husband had not complied the order of maintenance. It is also stated that the application u/s 12 of the Protection of Women From Domestic Violence Act, was dismissed for default on 15.12.2014. She had preferred restoration petition, which was registered as Criminal Miscellaneous Application No.36 of 2015, which was withdrawn with permission of the Court. Liberty was granted to prefer fresh application. The husband was a mute spectator to the order dated 3.9.2012. His appeal was dismissed for default. The proceedings were transferred by consent of

both the parties in the application preferred by the husband. The husband could not get any relief from the High Court. He is reluctant to pay maintenance. It was therefore, prayed that the husband be directed to pay maintenance amount. The Family Court decided the objection petition preferred by the petitioner. The said application was filed on 21.3.2016. The respondent opposed the same on the ground that it is misconceived. The provisions of Code of Civil Procedure are not applicable to the execution under the Protection of Women From Domestic Violence Act. The execution of maintenance order is required to be considered in accordance with provisions of Code of Criminal Procedure and not Code of Civil Procedure. Thus, it is apparent that the execution was qua the order of maintenance. The Family Court rejected the objection petition vide order dated 23.6.2016. The Court has also considered the objection regarding jurisdiction of the said Court in entertaining the said application. The Court observed that though the application under the provisions of the Protection of

Women From Domestic Violence Act was filed at Nanded, the same was transferred to the Family Court by the High Court. The application was dismissed for default on 15.12.2014. As the matter was transferred to the said Court, it has jurisdiction to execute the order passed in the said matter. Although the main application was dismissed, the applicant wife is entitled to recover the arrears of interim maintenance till the date of dismissal. The contention of the petitioner that on account of dismissal of the main application, the claim of interim maintenance gets frustrated, was rejected. It was further observed that the execution orders passed under the Protection of Women From Domestic Violence Act, are guided by the Code of Criminal Procedure and not Code of Civil Procedure.

13) I do not find any infirmity in the order passed by the Family Court. The proceedings under the Protection of Women From Domestic Violence Act, were transferred by this Court to the Family Court. The earlier order dated

3.9.2012 merges into the proceedings, which were transferred to the Family Court. Thus, the said Court had jurisdiction to entertain the said application. The sole intention of the applicant appears to avoid the payment of maintenance and therefore he tried to challenge execution proceedings. The respondent is not precluded from executing the interim order dated 3.9.2012 although the main application was dismissed. The Judgment relied upon by the petitioner is not applicable in the present proceedings. In the case *Sachin Bhodhale* (supra), this Court has observed that, the learned Magistrate has to follow the procedure laid down under the Code of Criminal Procedure for recovery of maintenance either final order, interim. Sub-Section 2 of Section 28 of the Protection of Women From Domestic Violence Act, can be placed into service when there is no provision available for implementing a particular order passed under the said Act. The procedure laid down u/s 125(3) of the Code of Criminal Procedure for getting compliance of the order passed by the Magistrate u/s 125

of the Code of Criminal Procedure will have to be followed for executing the order passed by the Magistrate u/s 20 of the Protection of Women From Domestic Violence Act. It is further observed that the reliefs available u/s 125(1)(a) of the Code of Criminal Procedure are analogous to reliefs available u/s 20 of the Protection of Women From Domestic Violence Act. The procedure for getting compliance of the orders passed u/s 125(1) of the Code of Criminal Procedure is available under the Code of Criminal Procedure.

14) The learned counsel for the petitioner, however, submitted that the said authority has been reversed. The authority also pertains to Section 20 and the present case is concerned with Section 23 of the Protection of Women From Domestic Violence Act. It is pertinent to note that Section 23 is in relation to power to grant interim and ex parte order under Section 18, 19, 20, 21 and 22 of the said Act. Therefore, the interim order is passed in accordance with law for granting maintenance

u/s 20 of the said Act. Without going through the observations made by this Court in the aforesaid decision, for the reasons stated herein above, the order passed by the Family Court deserves to be confirmed and there is no substance in the submissions advanced by the petitioner. In view of the above, the petition deserves to be dismissed. Hence, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.1059 of 2016 is dismissed.

(II) The petition stands disposed of.

[PRAKASH D.NAIK, J.]