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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 205 OF 2016**

Vinod Ashok Bhoite

... Applicant

vs.

Akshara Vinod Bhoite and Anr.

... Respondents

Mr. Kiran Kulkarni i/b. M/s.Kulkarni and Associates for the Applicant.

Mr. Nikhilesh Pote for Respondent no.1.

Mr. V.B. Konde – Deshmukh, APP for the State.

CORAM : A. K. MENON, J.

DATE : 28th JUNE, 2017**P.C.:**

1. By this Criminal Revision Application the applicant seeks to challenge the order dated 31st December, 2015 passed by the Additional Sessions Judge in two Criminal Appeals being Criminal Appeal Nos. 266 of 2014 and 335 of 2015. One filed by the present applicant and one by the respondent. Being aggrieved by the impugned order the applicant-husband has filed this application. The impugned order allowed the Criminal Appeal filed by the respondent wife and upheld the order passed by the Magistrate's Court directing the applicant to pay house rent of Rs. 8000/- per month and costs of Rs.2000/-. The applicant is also directed to pay maintenance allowance of Rs.13,000/- per month from the date of the application. In addition applicant was directed to handover stridhan property to the respondent wife and also pay compensation of Rs.2,00,000/- The Criminal appeal no. 335/2015 filed by the present applicant was dismissed.

2. The applicant before me today has questioned the grant of maintenance @ Rs.13,000/- per month on the basis that he has not been employed. Although, today he states that he is employed and earning a salary of Rs.18,000/- per month. He was employed only intermittently. It is a matter of record that at the material time the applicant was employed in Dubai as a qualified automobile diploma holder in the field of automobile industry.

3. The basis of the challenge as canvassed by Mr. Kulkarni, learned Advocate for the applicant is that the trial Court and the Sessions Court have failed to take into consideration the fact that the applicant did not have a source of income for payment of the maintenance. It is not in dispute that apart from the maintenance amount of Rs. 13,000/- per month called into question in this application and in support of which arguments have been advanced before this Court, the amount of Rs.8000/- as House Rent Allowance has also not been paid for a long time. The learned Counsel for the applicant states that the applicant is in arrears to the extent of Rs.12,00,000/-. It is also not in dispute quite apart from the maintenance amount even the Stridhan property which is directed to be handed over by the impugned order has not been handed over. There is no challenge to the order directing payment of Rs.8000/- per month as rent and directing applicant to handover stridhan property that has been pressed today. It is admitted by the applicant's counsel that only a sum of Rs.64,000/- towards rent comprising of Rs.8000/- for eight months has been paid as on November, 2014. Thereafter the applicant has not paid any further amounts.

4. Be that as it may, I am satisfied that the orders passed by the JMFC, Pune as well as by the Additional Sessions Judge are either perverse or otherwise erroneous. As far as the factual determination is concerned, the impugned order records that the challenge to the complaint on the basis that there were no instances of Domestic Violence has been negatived and the impugned order holds that there was sufficient reason for holding that the first respondent was subjected to domestic violence and that she is an aggrieved person entitled to file under Section 12 of the Domestic Violence Act.

5. Furthermore, it is not in dispute that the applicant shifted to Dubai during the subsistence of the marriage and in the meantime a divorce petition that has been filed by him and in which interim maintenance was directed to be paid to the respondent came to be dismissed. It is contended that a family Court appeal has since been filed which is pending. Although family Court appeal is filed there is no stay of the impugned judgment in as much the order directing payment of maintenance continues to operate and the applicant is therefore in breach of the said order as well.

6. Learned Counsel for the applicant submitted that it is necessary in facts and circumstances of the case to consider the present income of the applicant and that he is not in position to pay the amount that has been ordered to be paid. In this respect, he relies upon the decision of the Supreme Court in the case of ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy [II(2017) DMC1SC]***

and states that his contention that quantum of earnings of the party must be taken into account at the time of ordering payment of maintenance and that the claim for maintenance should be according to the income.

7. The record indicates that the respondent no.1 – wife had come clean before the Court by admitting that she was earning sum of Rs.8000/- and that the present applicant was running a garage being an automobile diploma holder who later shifted to Dubai where he was serving. At the material time the applicant kept the respondent-wife in the dark with respect to his income. The finding is that the applicant – original respondent no.1 had not disclosed nature of his services or income inspite of the fact that he was called upon to do so. The respondent no.1 was not providing any information about the nature of employment of the applicant and therefore the application came to be filed seeking direction against applicant herein to disclose nature of services and income. The finding of the fact was that he was under obligation to disclose these facts in order to assist the Court in arriving at the quantum of maintenance to be allowed. However, since he had not disclosed nature of services or income the trial Court passed the order on the basis of sum of maintenance of Rs.13,000/- per month passed by the family Court.

8. It is not in dispute that the order directing payment of Rs.13,000/- per month is operative and the applicant is bound and liable to comply with the same. However, he continues to be in arrears.

9. In the circumstances the facts of the case do not justify any interference.

Accordingly I pass the following order :

- (i) Application is dismissed.
- (ii) No Order as to costs.

(A. K. MENON, J.)