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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2319 OF 2017**

Deepika Gaurav Arora & Ors.

... Petitioners

vs.

Mr. Gaurav Amod Arora & Ors.

... Respondents

Mr. Pravesh Tyagi a/w. Mrs. Deepika Arora i/b. M/s. Ram Kutwal for the
Petitioner No.1.

Ms. P. P. Naigaonkar for the Respondents.

Mr. S. V. Gavand, APP for the State.

CORAM : A. K. MENON, J.

DATE : 18th JULY, 2017

P.C.:

1. By this Writ Petition the petitioners who are wife and children of respondent no. 1 seek to challenge an order dated 30th May, 2015 by which the Sessions Court has stayed the execution proceeding before the Metropolitan Magistrate 53rd Court, Mulund pursuant to an interim order passed on 8th November, 2016 in DV complaint bearing no. 83/DV/2016 till decision of the appeal no. 222/2017 pending before the Sessions Court. The impugned order modified the interim order by reducing the amount to be paid to each of these petitioners. Appeal no. 222 of 2017 came to be filed on 11th January, 2017. It was registered in April, 2017 and the first scheduled date was 9th May, 2017. In the meantime, it appears that respondent no. 1 filed an Execution Application on 8th December, 2016 which was served on the same day. The reply to the Execution Application was filed on 14th March, 2017. On 9th May, 2017 the matter came to

be adjourned to 1st June, 2017 for hearing.

2. At the hearing of this petition today, both the Counsel agreed that the matter could be disposed of finally at the stage of admission. Even otherwise considering the fact that the impugned order modified terms of the interim order pending before the Sessions Court, it would be appropriate that this matter be disposed of finally at the stage of admission. In the circumstances, I issue Rule. Rule made returnable forthwith. By consent taken up for final disposal.

3. The impugned order was passed on 30th May, 2017 when the appeal was scheduled to be heard on 1st June, 2017 i.e. the day before the scheduled date. Between 8th November, 2016 and April, 2017 no attempt was made to obtain stay of the order directing payment of interim maintenance and society charges. On 15th May, 2017 the respondent husband moved an application seeking access to respondent nos. 2 and 3. In the meantime, the petitioner's wife had moved the execution application. On 15th May, 2017 arguments were heard on the Execution Application and the application for access filed by respondent husband and orders were reserved and were scheduled to be pronounced on 30th May, 2017.

4. It transpires that the Sessions Court was also vacant between 17th May, 2017 to 28th May, 2017 and resumed on 29th May, 2017. According to the Counsel for the respondent, on 29th May, 2017 the matter was mentioned by the

Respondent's Advocate and taken on board but without notice to the petitioner. On 29th May, 2017 an application was moved for staying the impugned order dated 30th May, 2017. The respondent was asked to send a message to petitioners via Whatsapp of the fact that the matter would be heard on 30th May, 2017. This was apparently complied with. On 30th May, 2017 none appeared on the behalf of respondent. The order records that inspite of service the Petitioner's Advocate was absent. It is admitted today that no affidavit of service was filed but the Counsel for the respondent had appeared in the matter before the Sessions Court and had filed a print out of the relevant WhatsApp message and its acknowledgement. On the basis of this the Sessions Court proceeded to pass the following order on 30th May, 2017: -

"In the interest of justice, considering income of the appellant, the execution of order by Metropolitan Magistrate 53rd Court, Mulund below interim application in 83/DV/2016 is stayed till decision of appeal on a condition that he pays Rs.25,000/- to applicant and every daughter alongwith all the arrears till date and the society charges etc.

Matter already adjd to 1.6.2017"

5. In my view, given the fact that the matter was already scheduled to be heard on the day following the day on which impugned order was passed and in view of the fact that the Execution Application been fully heard by the Metropolitan Magistrate Court on 15th May, 2017 and been adjourned for orders, there was no likelihood of any coercive measure being taken specially since it is

case of the respondent that the Metropolitan Magistrate Court had not passed order on 30th May, 2017 and the Court was vacant since 17th May, 2017 since apparently the learned Magistrate had been posted elsewhere. The impugned order not only grants stay of execution but also modified the interim order of maintenance without hearing the petitioner. In the circumstances, there is no justification in passing the order dated 30th May, 2017 since appeal was to be listed on 1st June, 2017. The impugned order cannot be sustained.

6. In the circumstances, I pass the following order :

- (i) The impugned order dated 30th May, 2015 is set aside.
- (ii) It will be open for the parties to urge their respective cases in appeal in all pending applications.
- (iii) The applications will therefore be taken up by the Sessions Court without being influenced by any observation in this Order.
- (iv) Rule made absolute in the above terms and the petition is disposed of.
- (v) Parties to act on an authenticated copy of this order.

(A. K. MENON, J.)