

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

**CRIMINAL APPELLATE SIDE**

**CRIMINAL REVISION APPLICATION NO.449 OF 2015**

Ashish Shivprasad Shukla                      ...      **Applicant**

V/s.

Vibha w/o Ashish Shukla & Ors.      ...      **Respondents**

.....

Mr.D.Brijesh, Advocate for the Applicant.

Mr.Santosh Chari, Advocate for the Respondent No.1.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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**CORAM : A. M. BADAR J.**

**DATED : 9<sup>th</sup> JANUARY 2017.**

**P.C . :**

1                      By this Revision Application, the applicant/husband is challenging the order dated 20/08/2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.98 of 2014 thereby partly allowing the appeal filed by the revisional applicant/husband. Initially, the learned Additional Chief Metropolitan Magistrate, 4<sup>th</sup> Court, Girgaon, Mumbai was pleased to allow partly the application for interim relief filed by respondent No.1/wife under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (In short, “the Domestic Violence Act”), by an order dated 20/01/2014. The learned Additional Chief Metropolitan Magistrate was pleased to direct the

present revisional applicant to pay an amount of Rs.7000/- per month as an interim maintenance to the non-applicant No.1/wife and an amount of Rs.3000/- per month to each of two children of the present revisional applicant from the date of the application. In addition, the learned Additional Chief Metropolitan Magistrate was pleased to direct the revisional applicant to provide alternative accommodation to respondent No.1/wife or in the alternative to pay rent of Rs.7000/- per month. In appeal filed against the impugned Judgment and Order, the learned Additional Sessions Judge reduced interim maintenance awarded to respondent No.1 from Rs.7000/- to Rs.4000/- per month and to both children from Rs.3000/- to Rs.2000/- per month. The order in respect of alternative accommodation or in the alternative to pay the monthly rent was maintained. Hence this Revision Application by the revisional applicant/husband.

2            I have heard the learned counsel appearing for the revisional applicant at sufficient length of time. By taking me through the averments made in the application for interim relief as well as reply filed by the revisional applicant, the learned counsel for the revision applicant argued that the revision applicant resides at his native place and not at Mumbai and he is obliged to provide the accommodation to his wife at his native place. The learned counsel further argued that both Courts below erred in holding that the revisional applicant has stated in his reply that he has

sufficient source of income at his native place and, therefore, the impugned Judgment and Order passed by the appellant Court is *per se* illegal.

3           The learned counsel appearing for respondent No.1/wife supported the impugned Judgment and Order of the appellant Court.

4           I have carefully considered the rival submissions and also perused the application for interim relief and reply filed thereto. At this juncture, it needs to be noted that what is challenged here by the instant Revision Application is an interim order of maintenance, which was initially passed by the learned Additional Chief Metropolitan Magistrate and revised in an appeal by the learned Additional Sessions Judge, Greater Mumbai. The revisional applicant/husband is invoking revisional jurisdiction of this Court in challenging the interim order of maintenance. It needs to be noted that the revisional jurisdiction of this Court is to be exercised sparingly in rarest of rare cases when there glaring defect of procedure or patent illegality. The evidence cannot be re-appreciated and finding of fact if based on evidence cannot be upset in the revisional jurisdiction by this Court. The matter has to be viewed from this angle.

5           At the outset, I do not find any merit in the contention

of the revision applicant that he is no resident of Mumbai and he resides somewhere else. In the proceedings before the learned Additional Chief Metropolitan Magistrate at Mumbai respondent No.1/wife had given address of the revision applicant as resident of 'Flat No.503, 5<sup>th</sup> Floor, 'B' Wing, Harshgiri Building, Ashokvan, Dahisar (East), Mumbai 400 068'. The revision applicant had challenged the order granting interim maintenance passed by the learned Additional Chief Metropolitan Magistrate by filing an appeal before the learned Additional Sessions Judge, Mumbai. It is seen from the record that the revision applicant has given his address as resident of Mumbai in the Memo of Appeal before the learned Additional Sessions Judge. In the instant proceedings also address of revision applicant/husband is given as Mumbai. At this juncture, it needs to be hold that the revisional applicant is resident of Mumbai. Therefore, I do not find any merit in the contention that as the revision applicant resides at his native place and not at Mumbai and he is obliged to provide the accommodation to his wife at his native place. Even otherwise wife of the present revisional applicant is stated to be resident of Mumbai. She is entitled for alternative accommodation of her choice at Mumbai and not at native place of revisional applicant. From the reply of the revision applicant filed before the learned Additional Chief Metropolitan Magistrate opposing the application for interim relief, he has categorically mentioned that he has sufficient source of income. On the basis of this statement, it

cannot be said that the order awarding maintenance of Rs.4,000/- per month to the respondent No.1/wife and Rs.2,000/- per month to each child is unreasonable or perverse. Quantum of maintenance is the discretion of the Magistrate and in the case in hand, the exercise of that discretion was revised in appeal by reducing the quantum to Rs.4,000/- and Rs.2,000/- per month payable to the wife and children. By no stretch of imagination, it can be said that this amount of interim maintenance quantified by the appellant Court is unreasonable or perverse exercise of jurisdiction. I do not find any illegality or infirmity in the impugned order of interim maintenance. Similarly, the order regarding alternative accommodation or payment of rent in lieu of alternative accommodation is also well reasoned order. In the result, Revision Application is devoid of merit and the same is dismissed.

6           The learned counsel for the revision applicant states that stay be continued for a period of four weeks. Request so made is totally unreasonable. Hence it is rejected.

**(A. M. BADAR J.)**