

Dond

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 789 OF 2015

WITH

APPW NO. 437 OF 2017

Mrs. Rucha Pankaj Mehta-Mistry & Ors.

..Petitioners

Vs

Pankaj Hasu Mistry & Anr.

..Respondents

Ms. Anubha Rastogi for Petitioner.

Ms. Sushma Singh for respondent No.1.

Mr. A.R. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 28th August 2018.

P.C.:

1] By the present petition under Article 227 of Constitution of India, the petitioners have questioned the correctness of the Order dated 26th September 2012 passed in M.A. No.132 of 2012 by the learned 9th Joint C.C.J.D. & J.M.F.C., Thane, thereby granting interim maintenance to the petitioner Nos.2 and 3 of Rs.5000/- per month under 23 of Protection of Women From Domestic Violence Act, 2005 (for short Domestic Violence Act) and the Judgment and Order dated 25.8.2014 passed in Criminal Appeal No.289 of 2013 by the learned Additional Sessions Judge-6, Thane,

thereby enhancing interim maintenance to the tune of Rs.7000/- p.m.

2] By an Order dated 26th July 2017 passed by this Court, Mr. Y.S. Jahagirdar, Senior Advocate was appointed as a Mediator to explore the possibility of an amicable settlement between the parties. The learned counsel for the petitioners submitted that, the process of mediation has failed and the Mediator has submitted his report to this Court. The said report dated 7.3.2018 submitted in an envelope, is opened in the Court today and the same is taken on record. The learned Mediator has stated that, 'the agreement was not reached'.

3] In view of failure of mediation process, the petition is taken up for final hearing by consent of parties.

Heard learned counsel appearing for the applicant, the learned counsel for the respondent No.1 and the learned APP. Perused the impugned Orders.

4] The impugned Order dated 26.9.2012 passed by the 9th Joint C.C.J.D. & J.M.F.C., Thane, is an interlocutory Order passed under the Domestic Violence Act, thereby granting interim maintenance to the tune of Rs.5000/- p.m towards school fees to the petitioner Nos.2 and 3 who are the daughters of the petitioner No.1 and respondent No.1. In an appeal

preferred by the petitioners bearing No.289 of 2013, the learned Additional Sessions Judge-6, Thane was pleased to enhance interim maintenance to the tune of Rs.7000/- p.m.

It is submitted by the learned counsel for the respondent No.1 that, the main application filed before the learned Judicial Magistrate First Class, Thane is pending for final adjudication and the evidence is being recorded in the said proceedings.

5] After perusing the record, this Court is of the considered view that, the learned Appellate Court has not committed any error while granting the said quantum of interim maintenance in favour of petitioner Nos.2 and 3 and therefore no interference by this Court is warranted in its jurisdiction under Article 227 of Constitution of India.

The petition is accordingly rejected.

6] In view of Order passed in Writ Petition No.789 of 2015, Criminal Application No.437 of 2017 does not survive and the same is accordingly disposed off.

Anil
Chandrakant
Dond

Digitally signed
by Anil
Chandrakant
Dond
Date:
2018.08.31
14:36:39 +0530

(A.S.GADKARI, J.)