

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 3806 OF 2018**

Ms. Anjali Ramnath @Budhale] Petitioner

Vs.

Mr. Prajeet Budhale] Respondent

.....

Ms. Kokila Kalra, for Petitioner.

Mr. Mandar Limaye i/b Virendra V. Pethe, for respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 26TH APRIL, 2018.

P.C.

Not on board. At the request of Ms. Kalra, taken up for admission.

2. Heard Ms. Kalra, learned Counsel for the petitioner and Mr. Limaye, learned Counsel for the respondent.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 23rd February, 2018 passed by the learned Family Court Mumbai at Bandra below Exhibit 7 in Petition No.B-69 of 2017. By that order, the learned trial Judge rejected the prayers (b) and (c) made by the petitioner in application Exhibit 7. In sub para 2 of para 2 of the order, the learned trial Judge has observed thus;

“Apart from above aspect, let us consider the petitioner's prayer in present application Exh.7. Since the learned advocate for petitioner has already not pressed interim relief about directing husband to pay EMI in Petition No.A-

1865 /2016, question of considering same prayer again in present petition i.e prayer clause (a) does not arise. Moreover, learned advocate for petitioner has made statement that she is pressing stay/injunction against respondent No.2 only in present application i.e restraining the bank from taking possession or attaching suit flat or creating interest therein in any manner”.

4. Ms. Kalra invited my attention to application dated 29th April, 2017 filed by the petitioner, inter alia, praying for following reliefs;

- (a) That the petitioner Husband be directed to pay 4 pending EMI's and to continue paying future EMI's.
- (b) That the petitioner Husband be directed to continue to pay the pending monthly society maintenance charges with interest to the society Kalpataru Aura
- (b) That the petitioner Husband be directed to continued paying educational expenses of both the children.
- (c) Ad-interim relief in term of prayer clause (a) & (b) till the pending suit and final hearing of Divorce Petition.
- (d) Cost of Rs. 10,000/- to be provided to this application.
- (e) Any other order deemed fit by this Hon'ble Court.”

The application was on board for hearing on 20th November, 2017. On the same date, application Exhibit 7 was filed, inter alia, praying for following reliefs;

- a) That the Respondent No.1 be directed to pay the EMI's with interest with immediate effect to the Respondent No.2.
- b) That the Respondent No.2 be directed not to seek possession/attachment of the said flat till the pending and final hearing of the petition.
- c) That pending and final hearing of the petition stay be granted against the Respondent No.1 & 2 from attachment/alienating/creating interests/rights in the said flat.
- d) Ad Interim relief in terms of prayers clause (c) be granted till the pending and final hearing of the petition”.

5. In view thereof, the petitioner did not press application dated 29th April, 2017 for the present. However, the learned trial Judge observed that the petitioner did not press Exhibit 7. The said finding is factually incorrect. Apart from that, the trial Court also observed that during the course of hearing, Advocate for the petitioner made statement that she is not pressing stay/injunction only against respondent No.2/Bank. She submitted that the petitioner is pressing injunction against respondent No.2 Bank as well.

6. As according to the learned Counsel for the petitioner, these findings are recorded contrary to the material on record, she seeks to withdraw this Petition with permission to file Review Petition. She submits that all contentions of both the parties may be kept open and the Petition may be disposed of as withdrawn with liberty to file Review Petition.

7. In view thereof, Petition is allowed to be withdrawn and as such is disposed of as withdrawn with liberty to file Review Petition. It is made clear that grant of liberty shall not be construed as an expression of opinion on merits of the proposed application. All contention of the parties are expressly kept open. The learned trial Judge will decide Review Application on its own merits and in accordance with law. Order accordingly.

[R.G. KETKAR, J.]