

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION (ST.) NO.16279 OF 2018

Sanjay Jagannath Phagnekar                      ...      Petitioner  
Vs.  
Meena Sanjay Phagnekar                      ...      Respondent

Mr. Pritam P. Runwal for Petitioner.

**CORAM : R. G. KETKAR, J.**  
**DATE : JUNE 22, 2018**

**P.C. :**

Heard Mr. Runwal, learned Counsel for the petitioner and Ms Pooja Phagnekar, daughter of the respondent at length.

2. This Petition takes exception to the order dated 12.03.2018 passed by Shri N. M. Waghmare, District Judge-2, Kalyan, below exhibit-3 in Civil Appeal No.24 of 2018. By that order, the learned District Judge stayed the operation and execution of the judgment and decree dated 03.02.2018 passed by the learned 5<sup>th</sup> Joint Civil Judge, Senior Division, Kalyan in M.P.No.451 of 2005. The learned District Judge, however, ordered that the direction issued by the learned trial Judge to the petitioner in respect of maintenance of Rs.10,000/- per month to the daughter Pooja will remain in force. This order is passed in an appeal preferred by the respondent herein.

3. Aggrieved by the decision of the trial Court dated 03.02.2018, the petitioner has also instituted Appeal No.25 of 2018. Pending that Appeal, petitioner herein took out application exhibit-5 under Order XLI of the Code of Civil Procedure, 1908 for stay of the decree passed by the trial Court. That application was heard by Shri. S. P. Gogarkar, District

Judge - Kalyan and by order dated 12.03.2018, the learned District Judge has not only stayed the decree passed in M.P.No.451 of 2018 but further stayed the operation of that decree till next date in respect of recovery of maintenance amount.

4. The matter was heard on 12.06.2018 and parties were put to notice that on the next date of hearing, the Court will consider exercising its suo motu power under Article 227 of the Constitution of India for testing the validity of the order dated 12.03.2018 passed by Shri S. P. Gogarkar, District Judge- 3, Kalyan below exhibit 5 in R.C.A. No.25 of 2018 in the light of the decision of the Apex Court in the case of ***Surya Dev Rai Vs. Ram Chander Rai*, 2003 (6) SCC 675.**

5. After arguing the Petition for quite some time, parties agree that the impugned order dated 12.03.2018 below exhibit-3 in Civil Appeal No.24 of 2018 shall be treated as ad-interim order in Civil Appeal No.24 of 2018 as also below exhibit-5 in Regular Civil Appeal No.25 of 2018. Mr. Runwal assures that within two weeks from today, he will file reply and serve copy on the other side during this period. Ms Pooja assures that within two weeks from today, she will file reply to application exhibit-5 filed by the petitioner in R.C.A.No.25 of 2018 and serve copy on the other side during this period.

6. In view of the above, Petition is disposed of in the following terms:

- a. As and by way of ad-interim order, petitioner shall pay Rs.10,000/- per month as interim maintenance to daughter Pooja, until further orders;
- b. The learned Principal District Judge is requested to club these Appeals together and assign it to one Court;
- c. The learned District Judge, seized of the Appeals, is

requested to dispose of the application exhibit-3 and application exhibit-5, within 4 weeks from completion of the pleadings;

d. All contentions of the parties on merits are expressly kept open;

e. It is made clear that direction to pay interim maintenance @ Rs.10,000/- per month as an ad-hoc arrangement shall not be construed as an expression of merits of the case;

f. The learned District Judge will decide the applications on the basis of material on record and in accordance with law, uninfluenced by the observations made in this order.

g. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*