

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

**CRIMINAL APPLICATION NO. 485 OF 2017
IN
WRIT PETITION NO. 315 OF 2017**

Mr. Piyush Subodh GuptaApplicant
Versus
The State of Maharashtra & Anr.Respondents

Mr. Hitesh Vyas i/b. Pradip Chavan and Associates for the petitioner.
Mr. Vikramjit Garewal i/b. Siddharth Jaiswal for respondent no.2.
Mr. Piyush Gupta, Applicant in person, present.
Mrs. Charu Gupta, Respondent no.2 in person, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

***DATE : 11th SEPTEMBER, 2018
(IN CHAMBER)***

P.C. :

. At the outset, it may be mentioned that this matter was taken up for mediation. However, since the mediation failed, despite best efforts, the matter was ordered to be placed before the regular Court having assignment of Criminal Writ Petitions. At this stage, the petitioner contended that he has filed an application for modification of the order dated 11th October, 2017 and that by order dated 17th January, 2018, the regular Court (Coram : Smt. Revati Mohite Dere, J.) has passed the following order :-

“ 1. By this application, the applicant seeks modification of the order dated 11th October, 2017 passed by this Court (Coram :Smt. Anuja Prabhudessai, J.) in Criminal Writ Petition No. 315 of 2017.

2. Considering that certain changes/modifications are sought in the order dated 11th October, 2017, judicial propriety requires that the present application also be placed before the same Judge.

3. Registry to take steps accordingly. ”

2. Hence, this application is taken up for hearing. By this application, the applicant/petitioner has sought to modify the order dated 11th October, 2017, which reads thus :-

“ 1. The petitioner herein had sought to quash the proceeding being Case No.3/DV/2012 filed under the provisions of Domestic Violence Act. In the alternative the petitioners had sought to direct the Addl. Chief Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, to dispose of the interim applications expeditiously. In the course of hearing, the learned Counsel for the petitioner submitted that he is not pressing for the relief of quashing of the proceedings, and that the petitioner would like to restrict the relief as sought under prayer clause (b).

2. After having heard the learned Counsels for the petitioner and the respondent for some while, both the parties agreed as under :-

1) The applications for interim maintenance bearing Exhibit Nos. 4, 74, 75, 106 and 124 filed by the respondent No. 2 herein in Case No. 3/DV/2012 shall be disposed by the trial Court within a period of Two months from the date of receipt of copy of this order.

2) If the respondent No. 2-wife prolongs or delays the disposal of said applications, the learned Judge will be at liberty to dismiss the applications for non-prosecution.

3) Similarly, in the event the husband-petitioner prolonging or delaying disposal of the said applications, the learned Trial Judge will be at liberty to dispose of the said applications in his absence or without hearing the petitioner.

4) Both the parties agree that the orders passed in the aforesaid exhibits will be subject to the out come of this petition.

5) Both the parties have also submitted that a fresh attempt can be made for mediation before this Court.

6) Both the parties and their counsel will remain present before the court on 24th November, 2017 at 4.45 pm in Chamber.

Stand over to 24th November, 2017. ”

3. Mr. Hitesh Vyas, learned counsel for the applicant/petitioner contends that there is no progress in the main application filed under the provisions of The Protection of Women from Domestic Violence Act (D.V. Act), in view of filing of various interim applications by the parties. He submits that the trial Court be directed to dispose of the

main application within a stipulated time rather than deciding the interim applications, as directed vide order dated 11th October, 2017. Per contra, Mr. Vikramjit Garewal, learned counsel for respondent no.2/wife submits that the order dated 11th October, 2017 was passed by consent and hence, the same cannot be modified.

4. It may be mentioned here that the respondent no.2/wife had filed the proceedings under Domestic Violence Act being Case No.3/DV/2012. The said proceedings were filed in the year 2012. However, till date, the statement of the respondent no.2/wife has not been recorded mainly because of filing of several applications for interim relief. The petitioner has placed on record a chart giving details of the applications which have been disposed of as well as the interim applications which are pending before the learned Magistrate. The said details are as under :-

Applications adjudicated by Trial Court :-

Exhibit No.	Filed by	Filing Date	Prayers Sought	Order
Exhibit-28	Complainant	26/09/2012	Issue of Witness Summons to :- - HR Head of JP Morgan Bank - HR Head of Deutsche Bank - Commissioner of Income Tax	Order on : 06/11/2012 : Allowed

			- Manager, HDFC Bank and AMC - Manager, Standard Chartered Bank - Manager, DBS Bank - Manager, RBS Bank - Manager, Deutsche Bank and AMC - Manager, 3i Infotech	
Exhibit – 35	Complainant	29/10/2012	Issue of Additional Witness Summons to :- - Manager, Birla Sun Life - Manager, SBI Mutual Fund - Manager, SBI Bank - Manager, Kotak AMC - Manager, CAMS Registrar - Manager, Karvy Registrar	Order on : 06/11/2012 : Allowed
Exhibit – 112	Complainant	19/07/2016	Payment of school fees	Order on : 27/07/2016 : Partially Allowed
Exhibit – 118	Complainant	13/08/2016	Payment of electricity expenses	Order on 13/08/2016 : Rejected
Exh - 46 Exh - 60 Exh - 66	Complainant	07/12/2012 01/07/2013	Alternate Housing	Order on 27/01/2017 : Partially Allowed

Respondent No.2/wife's Applications pending before Trial Court :-

Exhibit No.	Date	Prayer	Status
Exhibit 1	26/04/2012	Residence, Maintenance, Injunctions, Protection Orders	Pending
Exhibit 4	10/05/2012	Residence, Maintenance, Injunctions, Protection Orders	Pending
Exhibit 8	06/07/2012	Residence, Maintenance, Injunctions, Protection Orders	Pending
Exhibit 47	19/12/2012	School Fees	Pending
Exhibit 57	18/02/2013	Protection Orders	Pending

Exhibit 67	01/07/2013	School Fees	Pending
Exhibit 73	21/11/2013	Compensation of rent of company flat	Pending
Exhibit 74	21/11/2013	Injunction against disposal of assets and investments u/s 18 (e)	Pending
Exhibit 75	21/11/2013	Reimbursement of School Fees, Electricity Bills, Medical Bills	Pending
Exhibit 83b	29/10/2014	Dental treatment expenses	Pending
Exhibit 98	18/05/2015	Residence and maintenance	Pending
Exhibit 106	07/01/2016	Additional Injunctions u/s 18(e)	Pending
Exhibit 116	27/07/2016	Reimbursements of school fees, electricity bills and medical expenses	Pending
Exhibit 118	12/08/2016	Electricity Bills	Pending
Exhibit 124	27/12/2016	Residence, Maintenance, Injunctions, Protection Orders	Pending
Exhibit 130	22/02/2017	Clarification of Order dated 27/01/2017	Pending

Petitioner husband's Applications pending before Trial Court :-

Exhibit No.	Date	Prayer	Status
Exhibit 12	18/07/2012	Access to minor children	Pending
Exhibit 14	27/07/2012	Production of Complainant's financial documents	Pending
Exhibit 26	26/09/2012	Shift from company flat to alternate housing provided	Pending
Exhibit 37	03/11/2012	Dismissal of complaint on grounds of non maintainability	Pending
Exhibit 69	23/07/2013	Expedite Trial	Pending
Exhibit 76	21/11/2013	Production of Complainant's financial documents	Pending
Exhibit 77	21/11/2013	Dismissal of Interim Applications and Expediting of Trial	Pending
Exhibit 107	22/02/2016	Decide all applications after Trial and expedite Trial	Pending
Exhibit 115	27/07/2016	Perjury by Complainant	Pending

5. Mr. Hitesh Vyas, the learned counsel for the applicant/petitioner submits that the application at Exhibit - 118 for electricity bill which is shown as pending has now been disposed of. It is also submitted that in view of the relief granted by the Family Court, the petitioner does not wish to press for the relief sought in the application at Exhibit 12. It is also submitted that in addition to these pending applications, the applicant has filed two more applications for interim relief. Thus, as on date, total 25 applications for interim relief are pending adjudication.

6. It has to be borne in mind that the Domestic Violence Act provides effective protection to women who are victims of violence. The Act prescribes mandatory time limit for fixing the date of hearing, service of notice and disposal of the application. The Act also vests powers on the Magistrate to pass interim orders as he deems just and proper. Thus, the intent and object of the Act is to provide efficacious and speedy relief to the victim of domestic violence.

7. In the instant case, the learned Magistrate has not been able to decide the application under section 12 of the Act within the stipulated

time in view of constant filing of the application for interim relief. Needless to state that disposal of these applications for interim relief will take considerable time and the same will delay the adjudication of the main application and thus defeat the legislative intent and command. Suffice it to say that procrastination of the proceedings is not in the interest of both the parties and particularly in the interest of respondent no.2/wife.

8. At this stage, Mr. Hitesh Vyas, the learned counsel for the applicant/petitioner states that the applicant/petitioner has been paying Rs.50,000/- (Rupees Fifty Thousand) per month towards interim maintenance of respondent-wife and two children. Under instructions from the applicant/petitioner who is present before the Court, he states that without prejudice to the rights and contentions and till the disposal of the main application on merits, the applicant/petitioner will continue to pay Rs.1,00,000/- (Rupees One Lakh) per month towards interim maintenance of the respondent-wife and two children. He further submits that the applicant/petitioner shall also continue to pay the school fees of both children. He states that in the event the respondent no.2/wife vacates the company

accommodation, the applicant/petitioner in compliance with the Court order, shall pay Rs.1,45,000/- (Rupees One Lakh Forty Five Thousand) to the respondent no.2/wife towards rent of alternative accommodation. Statements are accepted.

9. In the light of the above statement and in the interest of justice, the order dated 11th October, 2017 is modified to the extent that the directions contained in paragraph 2(1) to (6) of the said order are recalled. The learned Addl. Chief Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai is directed to dispose of the application under Section 12 of D.V. Act as expeditiously as possible and in any event, within a period of six months from the date of receipt of copy of this order, keeping in view the intent and object of the Act.

10. The petitioner/husband as well as the respondent no.2/wife shall fully co-operate and ensure expeditious disposal of the proceedings. The Trial Court shall deal sternly with dilatory tactics by any of the parties.

11. Both parties are directed to remain present before the learned Magistrate on 26th September, 2018 at 11:00 a.m.

12. Criminal Application No.485 of 2017 stands disposed of in the above terms.
13. Registry to place Criminal Writ Petition No.315 of 2017 before the regular Court.
14. Parties to act on authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)