

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

WRIT PETITION NO. 12131 OF 2019

Dr.Sandeep Shekar Shetty	...	Petitioner
V/s.		
Dr.Sarika Sandeep Shetty	...	Respondent

Mr.A.H. Ponda a/w. Mr.Amogh Singh and Mr.Sandeep i/b. Mr.Ghazaha Khan for Petitioner.
Ms.Kokila Kalra a/w. Ms.Beerta Bajwa for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 6th December 2019.

PC. :

1] The petitioner has impugned two Orders dated 5th October 2019 passed in (i) Interim Application No.10 of 2018 in Petition No.A-1019 of 2017, thereby directing the petitioner to pay interim maintenance to the respondent-wife and the child and (ii) Common Order below Exhibit Nos.44 and 54 in Petition No.A-1019 of 2017, rejecting his applications for striking of defence of the custodian parent/mother.

2] Heard Mr.Ponda, learned counsel for the petitioner and Ms.Kalra, learned counsel for the respondent. Perused record annexed to Petition.

3] The record indicates that, in an application bearing No.115/D.V./2017 filed under Section 23 of *The Protection of Women from*

Domestic Violence Act 2005 (for short, "D.V. Act"), the learned Metropolitan Magistrate, 57th Court, Kurla, Mumbai, by its Order dated 1st October 2019 has directed the petitioner to pay interim maintenance of Rs.25,000/- per month to the respondent.

4] At the outset, Mr.Ponda, learned counsel appearing for the petitioner submitted that, both the parties herein did not point out the said Order to the learned Judge, Family Court No.5, Bandra, Mumbai, (for short, "Trial Court") and if at all it is pointed out, the Trial Court has not taken into consideration the said fact that, in pursuance of Order dated 1st October 2019, a Court of Competent jurisdiction under the D.V. Act has directed petitioner to pay the said monthly maintenance to the respondent. He submitted that, if the said fact would have been pointed out to the Trial Court, the Trial Court would have certainly taken into consideration the said aspect while arriving at a conclusion for fixing the interim maintenance to be paid to the wife and minor child in Interim Application No.10 of 2018.

5] Learned counsel appearing for the respondent-wife submitted that, as a matter of fact, she had pointed out the said fact of passing an Order dated 1st October 2019 to the learned Judge of the Family Court No.5, Bandra, Mumbai, before passing of the impugned Orders dated 5th October 2019.

6] May that as it may, perusal of impugned Order passed in Interim Application No.10 of 2018 indicates that, the Trial Court did not have an

opportunity to peruse the Order dated 1st October 2019 passed under Section 23 of the D.V. Act by the learned Metropolitan Magistrate, 57th Court, Kurla, Mumbai (Exhibit-A/page 31 to the Petition) and to form its opinion about it before passing impugned Order.

In view thereof, the impugned Order dated 5th October 2019 passed in Interim Application No.10 of 2018 is hereby set-aside and Interim Application No.10 of 2018 is restored to the file of the learned Judge, Family Court No.5, Mumbai for its consideration afresh.

The learned Judge of the Family Court No.5, Bandra, Mumbai is requested to dispose off the said application within a period of eight weeks from the date of receipt of the present Order.

7] As far as challenge to common Order dated 5th October 2019 passed below Exhibit-44 and 54 in Petition No.A-1019 of 2017 is concerned, the petitioner is granted liberty to file a separate Petition impugning the said Order.

8] Petition is partly allowed in the aforesaid terms.

[A.S. GADKARI, J.]