

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No.308/2018

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Ms. Rupali Vijay Naik I/b. Rakesh Pathale
for the Applicant
Mr. Aniket D. Ranade for Respondent Nos.1
and 2.

CORAM : K.K.TATED,J.
DATED : JUNE 18, 2019

P.C.

1 Heard. This Application is filed by wife under section 24 of the Code of Civil Procedure, 1908 for transfer of D.V. Act proceeding bearing No.CC-169/2016 and recovery proceedings bearing application C.C.No.17/2017 and 159/2017 pending before the Judicial Magistrate, First Class, Rajapur to the Family Court, Bandra, Mumbai for final disposal on merits along with MP.No.715/2017 filed by Applicant No.3 husband for dissolution of marriage u/s.13(1)(ia) of the Hindu Marriage Act, 1955.

2 The learned counsel for the Applicant submits that the Respondent wife filed

criminal case No.169/2016 before the learned Magistrate, Rajapur u/s.12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. She submits that in the said case, the learned Magistrate passed an order dated 28.11.2016 and directed the Applicant No.3 to pay interim maintenance of Rs.5000/- pm each to the wife and a child. She submits that thereafter on 03.07.2017 the Applicant filed application for recalling the order dated 28.11.2016 in Criminal Case No.169/2017 and the said application is pending for hearing on merits. She submits that during pendency of the said application, the Respondent wife filed Execution Application for recovery of the arrears of maintenance charges. She submits that unless and until her application dated 03.07.2017 is not decided on merits, there is no question of Applicant No.3 to pay the maintenance charges to the Respondent or the child.

3 After arguing for some time, the learned counsel for the Applicant, after taking instructions from her client, who is present in court i.e. Applicant No.1 and Applicant No.2 submits that instead of deciding the application on merits, the

Applicant does not want to press the same however, the Judicial Magistrate, First Class, Rajapur may be directed to decide the Applicant's application dated 03.07.2017 on its own merits without being influenced by the earlier order passed by the said Court. She submits that as on today, as per the calculation of Respondent wife a sum of Rs.2,95,000/- is due and payable. She submits that the Applicants are denying the said liability. She submits that the Applicant is ready and willing to deposit sum of Rs.2 lacs in the court at Rajapur within two weeks from today, subject to outcome of her application dated 03.07.2017 filed by the Applicant for recalling the order dated 28.11.2016.

4 The learned counsel for the Respondents submits that they have no objection for this arrangement and the Respondents may be permitted to withdraw the said amount deposited by the Applicant. To that effect both the parties have filed minutes of order dated 18.06.2019 duly signed by Applicant No.1 and 2 and guardian of Respondent No.2. The Applicant also filed an undertaking stating that they are ready and willing to deposit sum of Rs.2 lacs in the Trial Court within

two weeks from today. Both the applications are taken on record and marked "X" for identification.

5 Hence, by consent of the parties, following order is passed:

a. Judicial Magistrate, First Class, Rajapur is directed to decide application dated 03.07.2017 filed by the Applicants for setting aside the order dated 28.11.2016 as early as possible but in any case on or before 30.09.2019.

b The Respondent to file Affidavit in Reply if any in the said application within two weeks from today, with copy to other side.

c. The Applicant to deposit sum of Rs. 2 lacs in the court of Judicial Magistrate, First Class, Rajapur, Dist. Ratnagari in C.C.No.169/2016 towards the maintenance charges as per order dated 28.11.2016 within two weeks.

d Liberty granted to the wife to withdraw the said amount subject to final outcome of CC-169/2016 under the D.V.Act.

e It is made clear that if the amount is not deposited within stipulated time as

stated hereinabove by the Applicant husband, in that case, their application for setting aside exparte decree shall stand dismissed without further reference to the court.

f The Execution Application filed by the Respondent wife being Nos.17/2017, 159/2017, 99/2018, 02/2019, 06/2019 for recovery of maintenance charges before the Judicial Magistrate, First Class, Rajapur, Dist. Ratnagiri in C.C.No.169/2016 is stayed till hearing and final disposal of the application filed by the husband for setting aside order.

g All contentions of the parties are kept open.

h The Misc. Civil Application stands disposed of as withdrawn.

(K.K.TATED, J.)