

Ms Taubon F. Irani for Petitioner.
Mr. R. T. Lalwani a/w. Ms Sadhana Jayakar-Lalwani i/b. Mr. Prakash Mahadik for Respondent.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 15.11.2018 passed by the learned Judge, Family Court No.2, Mumbai below exhibit-72 in Petition No.C-141 of 2012. By that order, the learned trial Judge allowed the application made by the respondent herein for modification of the order dated 09.01.2015 passed by the learned trial Judge below exhibit-6. By order dated 09.01.2015, the learned trial Judge partly allowed the application at exhibit-6 moved by the petitioner-wife for grant of interim maintenance, injunction direction to pay E.M.I., not to disturb her possession, etc. The learned trial Judge directed the respondent to pay –

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telephone bill from the date of the order till disposal of the petition in respect of the property situate at 301, Mahalaxmi Building, Parel, Mumbai.

3. By the impugned order, the learned trial Judge has modified order dated 09.01.2015 below exhibit-6. The learned trial Judge recalled - (i) the order of granting interim maintenance @ Rs.30,000/- per month and (ii) the order dated 09.01.2015 passed below exhibit-6 directing the respondent to pay entire EMIs and outgoing charges viz. society charges, electricity bill, telephone bill of property situate at Flat No.301, Shree Mahalaxmi Building, Parel, Mumbai. The learned trial Judge directed both the parties to share EMIs as also to bear society charges, electricity bill of the said house equally. This order was to take effect from the date of the application i.e. 18.01.2018.

4. Rule. Mr. Lalwani waives service for the respondent. In view of the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. The matter was heard at length on 31.01.2019 and was adjourned till today. Even today, the parties were heard at length.

6. After arguing the matter for quite some time, Mr. Lalwani submits that by consent of the respondent, impugned order may be set aside. The application at exhibit-72 may be heard and disposed of after the evidence of the parties is over. He submits that in case the learned trial Judge allows the application at exhibit-72, liberty may be reserved to the respondent to recover from the petitioner the excess amount of maintenance and E.M.I. paid by him.

7. In view thereof, by consent of the parties, the following order is passed:

- a. The impugned order dated 15.11.2018 is set aside;
- b. The learned trial Judge will decide the application exhibit-72 after the evidence of the parties is over. All contentions of the parties in that regard are expressly kept open;
- c. In case the respondent succeeds in application exhibit-72, the liberty is reserved to him to adopt appropriate proceedings to recover the excess amount of maintenance and E.M.I. paid to the petitioner-wife. All contentions of the petitioner wife in that regard are expressly kept open;
- d. The learned trial Judge will decide the Review Application at exhibit-49 filed by the petitioner along with exhibit-72 and thereafter will proceed to decide the main proceedings. All contentions of the parties are kept open;
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab