

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (APPW) NO. 290 OF 2019 IN
CRIMINAL WRIT PETITION NO. 186 OF 2019
Vinita Anand Bagde .Vs. Anand Udhao Bagade.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.R. Vyas, Advocate for applicant/respondent.
Mr. A.M. Sharma, Advocate for non applicant/petitioner.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 05, 2019

This is an application for modification of order dated 20.11.2019 and permission to deposit amount of Rs.85,000/-.

Reply to this application is tendered in the Court, which is taken on record.

Heard Mr. R.R. Vyas, learned counsel for respondent/applicant and Mr. A.M. Sharma, learned counsel for the petitioner/non-applicant.

Parties to this writ petition are husband and wife though divorce petition is pending before the Family Court at Nagpur. The parties will be referred as husband and wife in this order.

Wife filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 in the Court of learned Magistrate. The said proceedings were registered as Miscellaneous Criminal Application No.1936/2010. The proceedings were contested by the husband except contest about their *inter se* relations .

Learned Judicial Magistrate First Class, Nagpur on 12.12.2013 partly allowed the application filed by the wife. Operative portion of the order dated 12.12.2019 reproduced as under:

- “1. Application is partly allowed.*
- 2. Non-applicants are hereby prohibited from committing aiding, abetting in the commission of acts of domestic violence to applicant.*
- 3. Non-applicant no.1 is directed to pay rent of amount of Rs.5,000/- (Rs. Five Thousands only) per month to applicant for her separate residence.*
- 4. Non-applicant No.1 is directed to pay medical expenses of Rs.31,000/- (Rs. Thirty One Thousands Only) to applicant.*
- 5. Copy of judgment be given free of costs to both parties.*
- 6. Copy of this order be given to concerned police station. ”*

Being aggrieved by the said order husband and other non applicant in Miscellaneous Criminal Application No.1936/2010 approached to this Court by filing Criminal Writ Petition No. 798/2017. This Court (Coram : S.B. Shukre, J.), on 11.01.2018, decided the said writ petition. It will be useful to reproduce hereinbelow paragraphs 13 to 16 in the said judgment :

- “13. It is further directed that the petitioner no.1 shall pay medical expenses of Rs.16,000/- to the respondent.*
- 14. The impugned order stands modified in the above terms, while other operative parts of the impugned order stands confirmed.*
- 15. The rent amount of Rs.5,000/- per month shall started to be deposit from the month of January, 2018 and it shall be credited directly into the Saving Account No. 874610110009826 of the respondent with Bank of India, Kadbi Chowk Branch, Nagpur on or before 10th day of every month.*
- 16. For the month of January, 2018, rent is permitted to be*

deposited latest by 20th January, 2018 by crediting it to the said account of the respondent.”

After said, husband and other relatives filed Criminal Application (APPW) No. 35/2018 in Criminal Writ Petition No.798/2017 for clarification of order dated 11.01.2018. The said application was decided on 31.03.2018. It will be useful to reproduce the said order hereinbelow :

“The order dated 11th January, 2018 is clear and requires no further clarification or elaboration. However, to put it on record it is reiterated by this order that the rent amount of Rs.5,000/- per month has been directed to be deposited from the month of January, 2018 and the mode of deposit has been fixed to be by way of crediting it directly to the Saving Account No. 874610110009826 of the respondent with Bank of India, Kadbi Chowk Branch, Nagpur on or before 10th day of every month. If there are any arrears recoverable from the petitioner, the respondent is at liberty to initiate appropriate proceedings in this matter.”

In the meanwhile, execution proceedings were filed i.e. Miscellaneous Criminal Application No. 3260/2016. The learned Judicial Magistrate First Class, Nagpur vide order dated 03.09.2018 dismissed the execution proceedings. Against that, the present writ petition is filed. Notice on this writ petition filed by the wife was issued on 20.11.2019. The counsel for the husband and wife were heard and the order was passed that the husband shall deposit Rs.1,90,000/- within a period of 10 days before this Court without fail.

Thereafter the present applicant is filed for modification of order dated 20.11.2019 and also seeking permission to deposit an amount of Rs. 85,000/-. According to the learned counsel for the husband he was liable to pay rent from 11.01.2018 as directed in Criminal Writ Petition No.798/2017. Thus till November, 2019 he was required to pay respondent at the rate Rs.5,000/- per month for 23 months that comes to Rs.1,15,000/- (Rupees One Lac Fifteen Thousands only), out of that he has already paid Rs.30,000/- and therefore he is required to pay only Rs.85,000/-.

The said is vehemently opposed by the learned counsel for the wife.

Prima facie, it is clear from the judgment passed by this Court on 11.01.2018 that this Court has not modified Clause 3 of operative portion of order dated 12.12.2013 passed by learned Judicial Magistrate First Class, Nagpur. Order dated 11.01.2018 and order dated 21.03.2018 only show that from January, 2018 husband was required to pay amount directly in the saving bank account of the wife as mentioned in those two orders.

Order passed by learned Magistrate on 12.12.2013 does not show that learned Magistrate directed the husband to pay rent from the date of judgment. Therefore, husband will be liable to pay the rent at the rate of Rs.5,000/- per month from the date of the order i.e. 12.12.2013 till 12.12.2019 i.e. for 71 months and rent for this period at the rate of Rs. 5,000/- will be Rs.3,55,000/- (Rupees Three Lac Fifty Five Thousands only).

Learned counsel for the wife submitted that the wife has already received amount of Rs.1,56,000/- after taking the said into account, the husband's liability towards rent is Rs.1,99,000/-. In my view, orders dated 11.01.2018 and 21.03.2018 are very clear therefore I see no reasons to modify the order dated 20.11.2019.

Mr. Vyas, learned counsel for husband submits that husband will deposit cheque of Rs.85,000/- before this Court within three days from today. He sought further four weeks time to deposit balance amount of Rs.1,14,000/- before this Court.

Permission is granted to the husband to deposit cheque of Rs.85,000/- with the Registry of this Court. The husband is also granted further four weeks time to pay balance amount of Rs.1,14,000/- (Rupees One Lac Fourteen Thousands only) towards arrears of rent within a period of four weeks from today.

After aforesaid amount is deposited to this Court, the wife is entitled to withdraw the said amount. With these observations Criminal Application (APPW) No.290/2019 is disposed of.

JUDGE

srwagh