

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1892 OF 2020
IN
CRIMINAL REVISION APPLICATION NO.66 OF 2019

Swaroop Anand Bhalwankar,
Age 40 yrs., Occ. Singer/Composer,
R/o Shri. Samarth Row House No.2,
Opp. Anathony Church,
Ram Mandir Road,
Malad (West), Mumbai-95.

... Applicant.

... Versus ...

Roshani Swaroop Bhalwankar,
Age 36 yrs., Occ. Business,
R/o Sarojni, C-23, Town Center,
CIDCO, Aurangabad.

... Respondent

...

Mr. S.J. Salunke, Advocate for applicant
Mr. M.G. Kochar, Advocate for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 06th NOVEMBER, 2020

ORDER :

1 Heard learned Advocate Mr. S.J. Salunke for applicant and
learned Advocate Mr. M.G. Kochar for sole respondent.

2 Present application has been filed by the revision applicant for continuation of interim relief. He has filed the said Criminal Revision challenging the Judgment passed by learned Additional Sessions Judge-3, Aurangabad in P.W.D.V.A. Appeal No.187/2018 dated 30.01.2019 arising out of order below Exh.1 in P.W.D.V. Case No.587/2017 decided by learned Judicial Magistrate First Class, Aurangabad (Court No.10) on 14.11.2018. This Court by order dated 28.03.2019 had directed that no coercive steps to be taken against the applicant and directed the applicant to deposit an amount of Rs.2,75,000/- within a period of four weeks. Permission was granted to the non applicant to withdraw the said amount. The matter was then referred to mediation. Applicant says that he has deposited the amount as directed. It is also stated that he has also deposited an amount of Rs.1,00,000/- on 26.02.2019. Thus, the amount deposited by him towards maintenance is Rs.3,75,000/-.

3 It is further contended that the matter was circulated by non applicant for admission on 07.10.2020 and this Court has passed further order directing the applicant to deposit an amount of Rs.3,50,000/- within a period of 15 days from the date of the order. It has been also stated that in case of failure on his part to deposit the amount, the interim relief, not to take coercive action, would stand vacated. The applicant contends that due

to pandemic situation his economic condition has become worst. He is not in a position to deposit that amount. The applicant has submitted the income proof of 10 years before learned Trial Court. It is stated that those income proof are self explanatory to show that he is unable to pay amount of Rs.20,000/- per month, as directed by learned Judicial Magistrate First Class. It is also stated that applicant is indebted and he is also required to repay the amount in respect of the loan borrowed by him from Indian Bank by mortgaging his house. The non applicant is lyricist and she is earning sufficiently. She is also conducting the tuition classes. On the other hand, the applicant has no certain income, and therefore, he prayed that order passed by this Court on 07.10.2020 be recalled or modified. In the alternative, he has prayed that the installments be granted to deposit the said amount of Rs.3,50,000/-.

4 It will not be out of place to mention here that the learned Advocate appearing for the respondent i.e. non applicant has submitted oral objections. The report by mediator has been tendered on 24.07.2019. It is stated that the mediation has failed. The learned Judicial Magistrate First Class had decided application for interim maintenance on 14.11.2018. Maintenance @ Rs.12,000/- per month and @ Rs.8,000/- per month, in all Rs.20,000/- per month was granted to the wife and daughter. That order

was challenged by the husband-present revision applicant before learned Additional Sessions Judge. After hearing both sides the appeal was dismissed. As regards income of the respondent is concerned, it has been submitted by the aggrieved person i.e. wife, that he frequently goes on foreign trips. He takes part in stage show at Dubai. He is a Singer and Music Composer. He has given music to various movies. According to her, he is earning around Rs.70,000/- to Rs.80,000/- per month. He has his own row house at Malad (West) in Mumbai. His father is a retired Police Officer, who is getting pension around Rs.50,000/- to Rs.60,000/-. His mother is retired Headmistress and is earning around Rs.25,000/- per month.

5 Say has been filed by the respondent. We are at present dealing with interim maintenance, and therefore, only the contention in respect of income would be considered. Except vague denial there is nothing. He has not quoted his exact income. Even if we consider his present application, it can be seen, that he is not denying his occupation as Singer and Composer because in the title itself he has stated so. But then he has come with a case that due to pandemic situation his economic position has gone down. That cannot be the ground to avoid payment of maintenance. Though this Court had passed the order of not taking any coercive action against the application, subject to his payment of maintenance of Rs.2,75,000/-, it can be

well understood that, that amount was towards outstanding amount. That had not stopped or given a licence to the present revision applicant from depositing the due maintenance amount. In the entire application there is absolutely no whisper that he went on paying maintenance amount for the subsequent period also. There was no blanket stay granted by this Court. Rather this Court by order dated 28.03.2019 had stated that no coercive action should be taken. In other words, no stay was granted by this Court to the order passed by learned Magistrate to pay the maintenance @ Rs.20,000/- per month. It was submitted on 07.10.2020 by the learned Advocate for the wife that inspite of whatever amount has been deposited by the applicant i.e. Rs.1,00,000/- on 26.02.2019, yet amount of Rs.3,85,000/- was due from the applicant, and therefore, he was directed to deposit amount of Rs.3,50,000/-. The wife cannot be left to survive in miseries. If at all the said figure of amount of maintenance is lowered then whatever has been deposited could be adjusted, but at this stage, when no stay has been granted, concession cannot be given in the form of not to pay at all. Whatever due amount is there should be paid by the applicant and it is noted for the survival of the respondent. At the most, the alternate prayer of the applicant can be considered. Hence, following order.

ORDER

1 The application is partly allowed.

2 Prayer clause 'C' is hereby rejected.

3 Applicant-petitioner is allowed to deposit the amount of Rs.3,50,000/- as ordered by this Court on 07.10.2020 in five installments of Rs.70,000/- per month, which would start from 10th day of this month. Subject to the prompt deposit of the said installment no coercive steps be taken and only on the condition that he would deposit the said amount before 10th day of this month, there would be continuation of the order passed by this Court on 28.03.2019, Clause No.vi. In other words, it is clarified that if the applicant fails to deposit the first installment before 10th of this month and subsequent installments on or before 10th day of each month, the order of taking no coercive action would stand vacated.

(Smt. Vibha Kankanwadi, J.)