

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

WRIT PETITION NO.1426 OF 2020

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Neha Bhushan Joshi Petitioner

Vs.

Bhushan Chandrakant Joshi & Ors. Respondents

Mr. Gaurav Gokhale for Petitioner.

Mr. S.R. Agarkar, APP for State.

Mr. Bhushan Chandrakant Joshi, Respondent No.1 in person present.

Coram : NITIN W. SAMBRE, J.

Date : 11th DECEMBER, 2020

P.C.:

1. By the order impugned dated 15th January 2020, the Family Court No.5, Mumbai while dealing with the proceeding under Section 23 of Protection of Women from Domestic Violence Act, 2005 has ordered maintenance of Rs.3,000/- per month for the child. Respondent no. 1- husband, who appears in person agrees to pay the same regularly. He is fair enough to concede that he is not denying the payment of maintenance of Rs.3,000/- for the child and is not resisting the impugned order to that effect.

2. As far as the application Exhibit 9 is concerned, the present Petitioner has made following prayers :

- “a) That pending the hearing and final disposal of the main petition, the Hon’ble Court be pleased to pass a residential order under Section 19 of the said Act for rent of Rs.15,000/- per month or for temporary or permanent residence and accommodation or to the Applicant and her minor daughter against the Respondents from committing any acts of Domestic Violence under the Protection of Women from Domestic Violence Act, 2005;
- b) That pending the hearing and final disposal of the main petition, this Hon’ble Court be pleased to direct and order under Section 20 as monetary reliefs and orders of the Act to the Respondent to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) for her maintenance (clothing, food, medical bills, other bills, household expenses, education, upkeep, miscellaneous expenses) and Rs.20,000/- (upkeep, food, medicines, upkeep, miscellaneous expenses) of minor daughter and

other perks and incentives amenities borne by Respondent No.1;

- c) Ad-interim relief in terms of prayers (a) to (f) hereinabove and any other under Section 23 of the PWDVA 2005;
- d) For costs of litigation expenses of this interim application;
- e) For such further and other reliefs as the nature and circumstances of the case may demand.”

3. It appears that the Family Court proceeded to decide the prayer for grant of interim maintenance by keeping in mind the admission given by the Petitioner that she is living in adultery. The undisputed fact on record that the said admission is by virtue of typographical error and the Court below in the divorce proceeding has permitted the correction of such error, which order was confirmed by this Court.

4. However, the SLP questioning the said order at the behest of respondent no.1 is pending before the Apex Court.

5. Be that as it may, as there is no interim order in favour of the respondent-husband wherein the order granting amendment

referred above was stayed, it will be appropriate in my opinion to direct the Family Court, Mumbai to deal with other prayers of the Petitioner including that of grant of maintenance and for residence afresh by ignoring said admission in regard to the adultery which was erroneously given by the Petitioner.

6. We expect that the Family Court shall deal with the application, Exhibit 9 afresh to the extent of prayer for grant of maintenance and for residence, without being influenced by the findings recorded by the said Court in the impugned order.

7. The Petition is allowed in above terms.

8. We expect that the Family Court to decide the said matter as expeditiously as possible and in any case within a period of twelve weeks from today.

(NITIN W. SAMBRE, J.)