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

WRIT PETITION NO. 2797 OF 2014

Kashinath Vitthal Varekar

.....Petitioner

V/s.

Dipti Kashinath Varekar and another

.....Respondents

**WITH
WRIT PETITION NO. 2454 OF 2015**

Dipti Kashinath Varekar

....Petitioner

V/s.

Kashinath Vitthal Varekar

....Respondent

Mr. Sushil A. Inamdar for the Petitioner in WP 2797/2014 and respondent No. 1 in WP 2454/2015

Mr. Vikas B. Shivarkar for the petitioner in WP 2454/2015 and for respondent no. 1 in WP 2797/2014

Mr. S. S. Hulke APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 9, 2020.

P.C.

Heard respective counsel.

2] Being aggrieved by clause 3 of the impugned order dated

March 25, 2014 passed by District Judge-2, Pune, both husband and wife have questioned the said order which reads thus:

“3. The appellant who is original respondent Kashinath Vitthal Varekar is hereby ordered to pay monthly maintenance of Rs. 4,000/- to his wife Dipti Kashinath Varekar from the date of application till her death or divorce and allow her to stay in one room only which is fully constructed house and whatever amount is deposited in the court by the appellant that be adjusted towards arrears of maintenance”.

3] By the impugned order, learned District Judge has ordered that respondent-wife will be entitled for monthly maintenance of Rs. 4000/- from the date of application till her death or divorce. She is also permitted to stay in one room of the house which is owned by petitioner-husband.

4] Parties are in agreement that a Decree of Divorce is already passed.

5] In the aforesaid background, the submissions of the learned counsel for the petitioner-husband are, by the order of the Trial Court passed on 15/07/2013, wife was permitted to collect rent for period 15/07/2013 to 25/03/2014. As such, order of payment of maintenance ought not to have been made applicable from the date of application. He would further claim that since the amount of rent is already collected for the aforesaid period i.e. from 15/07/2013 to 25/03/2014 by the respondent-wife, the Court may pass appropriate order directing modification.

6] While countering aforesaid submission, counsel for the respondent-wife would urge that issue of divorce is not in dispute. The parties are admittedly governed by provisions of Hindu Law, order of maintenance cannot be restricted only to the extent of date of divorce. He would further claim that maintenance since is not paid till date, respondent-wife be permitted to collect the rent, as was ordered by the Trial Court.

7] Considered rival submissions.

8] The factum of divorce between the parties is not in dispute and that being so, it cannot be held that respondent-wife is entitled for maintenance at the rate of Rs. 4000/- only till the date of divorce. Such observations are without any legal basis and as such, it has to be modified to mean that respondent-wife will be entitled for maintenance at the rate of Rs. 4000/- per month till her death and it is accordingly modified.

9] As far as the claim for adjustment of the amount of rent received is concerned, petitioner-husband is right in claiming such adjustment particularly when respondent-wife has already collected rent for a period from 15/07/2013 to 25/03/2014. As such, while paying arrears of maintenance to respondent-wife, husband has every right to claim the adjustment of the amount of rent received by respondent-wife. As such, order of payment of maintenance of Rs. 4000/- is made operational from the date of the order i.e. 25/03/2014.

10] As far as the claim of respondent-wife for recovery/collection of rent is concerned, the said issue can be gone into by the Court below at the time of execution of the order of maintenance, in case if, not honoured by the petitioner-husband.

11] With above observations, both petitions stand disposed of.

[NITIN W. SAMBRE, J.]