

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 CRIMINAL WRIT PETITION NO.1328 OF 2019

**ANWARKHAN S/O. MANJURKHAN PATHAN
VERSUS
FARNAJ W/O. ANWARKHAN PATHAN AND OTHERS**

Mr. Amol R. Gaikwad, Advocate for the petitioner
Mr. S.S. Dargad, Advocate for the respondent No.1

CORAM : N. R. BORKAR, J.

DATE : 25-10-2021

P. C.

. This petition challenges the order dated 05-07-2019 passed by the learned Additional Sessions Judge, Ambajogai.

2. The respondent No.1 herein had filed an application under the provisions of Protection of Women from Domestic Violence Act (for short 'the Act') for various reliefs. The learned Magistrate rejected the said application by order dated 02-11-2017. The respondent No.1 against the said order of learned Magistrate, filed an appeal before the Sessions Court. In the said appeal, an application was filed purportedly under Section 23 of the Act for interim maintenance. The learned Additional

Sessions Judge allowed the said application and directed the present petitioner to pay Rs. 2500/- to the respondent No.1 and Rs. 2500/- to the son of respondent No.1 by the order impugned.

3. I have heard learned counsel for the petitioner and the learned counsel for the contesting respondent.

4. The learned counsel for the petitioner submits that the application for interim maintenance was not maintainable. It is submitted that even otherwise the application of the respondent No.1 was dismissed after trial and thus in such circumstances the learned Additional Sessions Judge was not justified in allowing the interim maintenance application.

5. On the other hand learned counsel for the contesting respondents submits that the appeal is continuation of the original proceeding and therefore, it cannot be said that the appellate court is powerless and it cannot pass interim maintenance order even if case is made out for grant of such interim relief. It is submitted that the

learned Additional Sessions Judge, after considering the facts and circumstances passed the impugned order. It is submitted that this petition, therefore, may not be entertained against the interim order.

6. Considering the fact that the order impugned is an interim order and substantive appeal is still pending before the appellate court, I am not inclined to interfere with the order impugned. Instead the appellate court can be directed to decide the appeal itself within stipulated period. In the result, following order is passed.

ORDER

- i. The petition is dismissed.
- ii. The appellate court shall endeavour to decide the Cri. Appeal No. 85/2017, as early as possible and in any case within nine months from the date of receipt of copy of this order.

[N. R. BORKAR, J.]