

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 725 of 2021

[Nasirshah Husainshah and ors. ..vs.. Anjumnisa Nasirshah]

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

Court's or Judge's orders

Smt. Sonali Saware-Gadhawe, Advocate for the petitioners

CORAM : ROHIT B. DEO, J.

DATED : 06-10-2021

Heard.

2. The petitioners have suffered an order of maintenance rendered in M.C.A. 124/2013, which is instituted by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('D.V. Act' for short). The learned Magistrate directed petitioner 1 – husband to pay monthly maintenance of Rs. 4,000/- (Rupees Four Thousand) to the wife and monthly rent of Rs. 1,000/- (Rupees One Thousand). Certain other relief was also granted *inter alia* a protection order and direction to return the gift articles.

3. To my mind, the quantum of maintenance is absolutely reasonable. However, the petitioners have

preferred an appeal which they are undoubtedly entitled to do. The appellate Court stayed the order of the learned Magistrate as far back as in 2016. The only condition imposed was that an amount of Rs. 30,000/- (Rupees Thirty Thousand) shall be deposited in the Court. Again, considering that the amount of maintenance and rent was made payable with effect from the date of the application, the deposit of Rs. 30,000/- (Rupees Thirty Thousand) is relatively paltry.

4. The hearing of the appeal dragged on although the paper book was prepared on 18-12-2019. The appeal was fixed for final hearing on 13-9-2021. While the presence of the appellants (petitioners herein) was not strictly necessary, an application which is signed by the counsel was preferred seeking adjournment on the ground that the husband is ready to settle the matter and as a last chance, the hearing be adjourned. It was then added almost as after thought that the husband has undergone a rapid test for Covid-19, which is positive.

5. The learned Sessions Judge, Akola rendered an elaborate order noting that the wife virtually did not get any relief despite the order of the learned Magistrate and then proceeded to adjourn the hearing subject to deposit of Rs. 2,00,000/- (Rupees Two Lacs) in the Court within two weeks. The hearing was adjourned to 4-10-2021. I am told by the learned counsel for the petitioners that an adjournment was sought on 4-10-2021 on the ground that this Court is approached and now, the hearing is fixed on 13-10-2021.

6. In my considered view, the order impugned does not suffer from any infirmity, at any rate, the order impugned does not suffer from infirmity as would persuade me to interfere in writ jurisdiction.

7. The learned appellate Court was pleased to stay the order of maintenance which the learned Magistrate made effective from the date of the application. The condition imposed was to deposit relatively meager amount of Rs. 30,000/- (Rupees Thirty Thousand). Since then, the wife is waiting in vain for the final

hearing of the appeal and at the fag end, when the wife probably saw some light at the end of the tunnel, the husband sought adjournment on a specious ground that the matter can be settled. If in such situation, the appellate Court has directed the husband to deposit Rs. 2,00,000/- (Rupees Two Lacs), it would be absolutely unfair to brand such exercise of discretion as unwarranted or unnecessary. Such order, in my considered view, was absolutely necessary and subserves the legislative intent underlying social welfare legislation like the D.V. Act and cognate laws.

8. I am not inclined to interfere in writ jurisdiction. The writ petition is dismissed.

9. It is made clear that if the order is not complied on or before the next date of hearing, the appellate Court shall proceed to pass the further order.

JUDGE