

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 CRIMINAL WRIT PETITION NO.524 OF 2022

SAINAND KASHINATH DHAKNE
VERSUS
KALPANA W/O SAINAND DHAKNE AND ANOTHER

...

Advocate for Petitioner : Mr Ganesh Suryakant Dahale
Advocate for Respondent Nos. 1 and 2 : Ms Preeti R. Wankhede

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 19th SEPTEMBER, 2022

PER COURT :

1. Heard finally with consent of both the sides.
2. The petitioner is challenging the order passed by the Appellate Court/Additional Sessions Judge, Aurangabad in PWDVA Appeal No. 18/2022 whereby the order passed by the learned JMFC regarding attachment of the property of the present petitioner was upheld on the ground that appeal is not maintainable.
3. Heard Mr Ganesh Dahale, learned counsel for the petitioner and Ms Preeti Wankhede, learned counsel for the respondents.
4. Perused the various orders passed by the Court.
5. It is revealed during the course of argument that there is some dispute about the calculation of arrears of maintenance. In a writ petition, disputed question of fact cannot be decided by way of writ petition. If there is any dispute about figure of arrears of maintenance, the legal remedy is available before the concerned party and get it resolved. The writ petition

is not remedy to answer which is the correct calculation of arrears of maintenance.

6. As such, the writ petition itself is not maintainable. According to the decision of this Court in Criminal Writ Petition No.2542/2014 (Coram : M.L.Tahaliyani, J.) dated 24th September, 2014, the writ petition is not maintainable against the order passed by the learned Magistrate in respect of recovery of maintenance amount, so also, appeal under the Domestic Violence Act. As such, criminal revision application can be filed by the aggrieved party by taking aid of section 397 of the Cr.P.C.

7. Respondent No.1/wife is at liberty to withdraw remaining amount of Rs.35,000/- towards part of payment of arrears of maintenance.

8. Having regard to the above discussion, the criminal writ petition is liable to be dismissed with costs of Rs.5,000/- to the respondents.

9. The petitioner is at liberty to file criminal revision application according to the provision of Section 397 of Cr.P.C. before the concerned Court and challenge the impugned order if he desires.

10. The Criminal Writ Petition stands dismissed.

[SHRIKANT D. KULKARNI, J.]

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