

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1644 OF 2022**

**RAHUL SURYABHAN SURYAWANSHI
VERSUS
ISHWARI W/O. RAHUL SURYAWANSHI**

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Advocate for Petitioner : Mr. Joshi Rahul G.

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CORAM : KISHORE C. SANT, J.

DATE : 7th DECEMBER 2022.

Per Court :

Heard the parties at length.

1. This petition is by the husband aggrieved by the order of interim maintenance passed under the proceeding under Domestic Violence Act. The learned trial Court by order dated 11.01.2022, directed the Petitioner to pay an amount of Rs.11000/- per month to Respondent No.1 towards interim maintenance. This order was passed after hearing both the sides. The Petitioner challenged this order by filing an appeal bearing Criminal Appeal No. 21/2022 in the Court of learned Sessions Judge, Jalgaon. The said appeal came to be dismissed with cost by judgment and order dated 30.09.2022.

2. It is the submission of the Petitioner that while passing the order, the trial Court has not followed the procedure as prescribed under Section 23 of the of The Protection of Women from Domestic Violence Act, 2005, which is reproduced as below.

Section 23. Power to grant interim and ex parte orders.—

- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

. He submits that when the Court has not followed the procedure under Section 23, the other course that open was to follow the procedure under Section 28 of the said Act. For ready reference, Section 28 is reproduced below :

Section 28. Procedure.—

- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
- (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

. He placed reliance upon the judgment passed by the Karnataka

High Court in Criminal Revision Petition No. 815/2009. He submits that the facts in the said judgment and the present petition are similar. A submission is made that under Section 23, the ex-parte order could have been passed. But since notice is issued, the Court was bound to follow the procedure as prescribed under Section 28. This Court hardly see any merit in this submission.

3. Looking at sub-section (2) of Section 28, it is clear that the Court can follow its own procedure for disposal of an application under Section 12 or under Section sub-section (2) of Section 23. Thus, there is no procedure is prescribed necessary to be followed. This Court finds that the petition is arising only out of interim orders and it would not be proper to cause interference with the orders passed by the Court below. This Court does not find any illegality committed by the learned Court below and thus does not find any merit in the petition. The petition is therefore dismissed.

[KISHORE C. SANT, J.]

Najeeb.