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

WRIT PETITION NO. 286 OF 2022

Ishani Bhavik Mody
(maiden name
Ishani Paresh Parekh) ..Petitioner
vs.
Bhavik Bhadresh Mody and anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 2185 OF 2022
IN
WRIT PETITION NO. 286 OF 2022**

Bhavik Bhadresh Mody ..Applicant
Vs.
Ishani Bhavik Mody and anr. .. Respondents

**WITH
WRIT PETITION NO. 1522 OF 2022**

Bhavik Bhadresh Mody .. Petitioner
Vs.
Ishani Bhavik Mody and anr. .. Respondents

Ms. Chaula Solanki a/w Mr. H. H. Nagi, Ms. Rinky Kanojia and Ms.Niranjana Pradhan i/b H. H. Nagi & Associates, for petitioner in WP/1522/2022, for Respondent in WP/286/2022 and for Applicant.

Mr. Bhavesh Parmar a/w Ms. Devmani Shukla, Ms. Reshma Nair, Mr. Rajesh Sahani i/b Devmani Shukla, for Petitioner in WP/286/2022 for Respondent in WP/1522/2022.

Mr. R.M. Pethe, APP for Respondent-State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 23, 2022

P.C. :

1. The petitioner-wife, Ishani has challenged the judgment and order dated 12/01/2022 passed by the Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai. Ishani filed the complaint under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter "the said Act", for short) seeking relief under sections 17 to 23 of the said Act before the learned Magistrate's Court, Borivali. The trial Court passed order on an application filed by Ishani under section 23(2) of the said Act for interim relief. The trial Court directed the respondent no.1-husband-Bhavik to pay Rs.60,000/- per month. Bhavik was further directed to provide two BHK flat or rent of Rs.30,000/- per month from the date of the application. In appeal filed before the Sessions Court, the order passed by the trial Court was quashed and set aside to the extent of quantum of interim maintenance and rent and the matter was remitted back for a fresh decision. The Sessions Court directed the trial Court to take the affidavits

of assets and liabilities from the parties and to decide the application for interim relief afresh to the extent of quantum of interim maintenance and rent. The appellate Court further directed Bhavik to deposit Rs. 40,000/- per month towards interim arrangement before the Court below, on the first day of every month, commencing from 01/02/2022 until the decision of the quantum. Ishani was given liberty to withdraw this amount. It was further stipulated that if Bhavik fails to deposit the said amount, in any case, before the 10th day of the concerned month, the impugned order shall revive.

2. Learned counsel for Ishani submitted that the appellate Court was not justified in interfering with the findings of the trial Court which was only an order granting interim maintenance. He invited my attention to the findings of the trial Court and submitted that taking an overall view of the matter, the trial Court granted the maintenance which cannot be said to be unreasonable and the same is in consonance with living standard of Ishani. He was at pains to point out that Ishani was used to a

comfortable life which the trial Court rightly took note of and accordingly maintenance was granted. Learned counsel further submitted that the appellate Court was not justified in remitting the matter back on the basis of the decision in **Rajnesh Vs. Neha and anr.**¹ as the law laid down in *Rajnesh* was pronounced after the application was reserved for a decision by the trial Court, but before the order was pronounced by the trial Court. In any case, he has submitted that the decision in *Rajnesh* (supra) was never brought to the notice of the trial Court and therefore the appellate Court, in all fairness to the trial Court, ought not to have set aside the order on this ground. Learned counsel further submitted that Bhavik was paying Rs.3,00,000/- per month towards the installment of the flat, which is alleged to be sold, only with a view to avoid the liability to pay the maintenance, which would demonstrate the sound financial capacity of Bhavik.

3. On the other hand, learned counsel for Bhavik invited my attention to the findings recorded by the appellate Court and extensively took me through the decision of the

¹ (2021) 2 Supreme Court Cases 324

Supreme Court in *Rajnesh* (supra). According to her, the impugned order does not call for any interference.

4. Heard learned counsel. Perused the paperbook. Having regard to the observations made by the appellate Court, I do not propose to interfere with the impugned order as the order of remand can well be sustained for most of reasons indicated therein. I do not propose to examine the contention of the learned counsel for Bhavik that the decision in *Rajnesh* (supra) ought not to have influenced the appellate Court as the same was rendered by their hardships after the application was reserved for orders by the trial court, I find that, the trial Court was impressed by the submission made on behalf of Ishani that prior to her marriage, she was living in a two storey bungalow having measurement of 3000 sq.ft. in a posh area of Charkop and leading a luxurious life and that Bhavik assured her that he would maintain her high standard of life. This was the basis of the claim for maintenance of Rs.2,00,000/-. The other circumstance which was taken into consideration by the trial Court was that Bhavik was paying Rs.3,00,000/- per month

as installment towards the bank loan for the flat he owns, and therefore this fact was sufficient to infer that Bhavik was earning more than Rs.3,00,000/- per month.

5. The trial Court appears to have erred in appreciating the documents as placed on record. I had called upon learned counsel for Ishani to produce the said documents. Having examined the documents, prima facie it does not appear that the same is indicative of Bhavik paying Rs. 3,00,000/- per month towards the installment. It is a standalone transaction. I may hasten to add that it would be open for Ishani to establish that Bhavik was paying Rs.3,00,000/- per month towards the installment of the flat that he purchased when the application is reheard by the trial Court. I am not expressing any opinion,.

6. In **Manish Jain Vs. Akanksha Jain**², the Supreme Court held that the financial position of the parents of the applicant-wife would not be material while determining the quantum of maintenance. Maintenance is dependent on factual situation and various other factors. The trial Court appears to have been swayed by the standard of living

² (2017) 15 SCC 801

which Ishani was used to in her parental home. I do not therefore see any reason to interfere with the findings of the appellate Court.

7. The trial Court while considering the the application for interim maintenance afresh, undoubtedly will consider the criteria for deciding the quantum of maintenance in accordance with the law laid down by the Supreme Court in *Rajnesh* (supra).

8. I propose to interfere with the order passed by the appellate Court only to the limited extent so far as the operative portion in paragraph (3) is concerned. The appellate Court has directed the deposit to be made of interim maintenance of Rs.40,000/- per month commencing from 01/02/2022. The appeal was presented on 23/04/2021. In my opinion, ends of justice would be met if Bhavik is directed to pay interim maintenance of Rs.40,000/- per month from the first date immediately next from the month commencing the date of presentation of the appeal and continue to pay regular maintenance in terms of appellate Court's order.

9. In this view of the matter, the order of the Sessions Court is maintained except to the extent that instead of the date 01/02/2022 in paragraph (3) of the operative order, the same shall be read as '01/05/2021'.

10. It is submitted that the sum of Rs.7,00,000/- as directed by this Court by order dated 16/03/2022 has been paid. The balance of the arrears be paid within a period of 4 weeks from today. Bhavik to continue to pay in terms of the order passed by the appellate Court. All contentions are kept open. The trial Court not be influenced by any observations made by me or the appellate Court on merits.

11. The writ petition is disposed of in the above terms. In view of disposal of the writ petition, Interim Application No. 2185 of 2022 and Writ Petition No. 1522 of 2022 do not survive and the same stand disposed of.

(M. S. KARNIK, J.)