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

CRIMINAL WRIT PETITION NO.6203 OF 2021

Joseph Mani

...Petitioner

V/s.

Beena Joseph & Anr.

...Respondents

Mr. Bhavesh Parmar a/w Mr. Rajesh Sahani, Ms. Reshma Nair and
Mr. Vivekanand Akshali i/by Mr. Danani J. Shukla for Petitioner.

Mr. Deepak J. Tambe for Respondent No.1.

Ms. G. P. Mulekar, APP for Respondent No.2 (State).

CORAM : AMIT BORKAR, J.

DATE : DECEMBER 13, 2022

P.C.:

1. The petitioner-husband is challenging order dated 20th July, 2021, thereby dismissing the Appeal arising out of an order dated 12th January, 2021, passed by the learned Judicial Magistrate, First Class, Court No.9, Pune below Exhibit-81 in Criminal Miscellaneous Application No.3611 of 2016.

2. The respondent no.1-wife has filed Criminal Miscellaneous Application No.3611 of 2016 against the petitioner under Section 23 of the Protection of Women from Domestic Violence Act, 2005. On an Application seeking interim maintenance, the learned Magistrate by order dated 8th February, 2019 directed petitioner to pay interim maintenance of Rs.20,000/- to the respondent no.1-wife from the date of

Application till the date of disposal of the Application.

3. Aggrieved by order dated 8th February, 2019, the petitioner filed Criminal Appeal No.118 of 2019. In the said Appeal, parties filed consent terms. The consent terms are as under:-

“The aforesaid Criminal Appeal be disposed off on the following consent terms:-

(a). The proceeding hearing Cri. M. A. No.3611/2016 to be directed to be disposed of finally on or before 31.12.2019.

(b). Without prejudice the rights the appellant shall pay/deposit in the Ld. Trial Court as per the schedule:-

** Rs.1.5 lacs by 10.07.2019*

** Rs.1.0 lacs by 05.08.2019*

** Rs.1.0 lacs by 05.09.2019*

Opponent is entitled to withdraw.

(c). All rights and contentions raised in the appeal are kept open to be decided by the Ld. Trial Court finally.

(d). The appellants right to seek reimburse/adjustment of the monies deposited shall further be decided by the Ld. Trial Court at the time of final adjudication.”

4. After filling of the consent terms, the wife filed an Application bearing Criminal Miscellaneous Application No.3611 of 2016 for recovery of arrears of maintenance. The learned Magistrate directed the petitioner to pay arrears of maintenance within a reasonable period granting liberty to the respondent no.1-wife to initiate proceedings under Section 128 of Code of Criminal Procedure, 1973. Aggrieved thereby, the petitioner filed Criminal Appeal No.22 of 2021 before the learned Sessions Judge. The learned Sessions Judge by impugned order dismissed the Appeal.

5. The petitioner, therefore, filed present Criminal Writ Petition.

6. The first contention raised on behalf of the petitioner is that the consent terms are conditional in nature, which cast bilateral obligation on the parties to perform their part of contract. According to the petitioner, the consent terms being bilateral, an obligation is cast on the petitioner to perform her part of the contract. In absence of material to show that the respondent no.1 had performed her part of contract, the respondent no.1 is not entitled for further maintenance.

7. I have considered the submissions in the light of the consent terms on record. On perusal of the consent terms, I find no mutual obligations are cast on the parties. The first clause of the consent terms directs the learned Magistrate to decide the proceedings finally on or before 31st December, 2019. The second clause is direction to the husband to pay the amount of maintenance. Rights of both the parties are taken care of by inserting clause no.(c) and (d), mentioning that in case ultimately it is held that the amount of maintenance is in excess, the husband shall be entitled to get reimbursement of the money deposited in excess. In the absence of obligation cast on the wife that she would get maintenance only on performing certain acts is absent in the consent terms. The consent terms are not conditional in nature. Therefore the obligation of the petitioner to pay maintenance directed by order dated 1st July 2019 still hold field. It is pertinent to note that the order dated 8th February, 2019 has

not been set aside in the consent terms. In the result the order dated 8th February, 2019 still remains in force. Petitioner is under obligation to pay maintenance as per order dated 8th February, 2019.

8. Learned advocate for the petitioner in support of his submission placed reliance on the judgment of Apex Court in the case of **Pawan Kumar Arya Vs. Ravi Kumar Arya**, reported in (2020 (2) All M.R. 880). On perusal of the facts before the Apex Court, it appears that the consent terms in therein cast mutual obligation on the parties. The obligation cast on the other party was based on performing of certain conditions. Therefore, in the facts of the said case, the Apex Court held that the parties were bound by the terms of consent. There cannot be dispute about the preposition of law that the parties are bound by the consent terms. But in the facts of the case, in absence of obligation cast on the wife, the consent terms cannot be interpreted as conditional in absence of any such condition. Therefore, the judgment relied upon is of no help to the petitioner.

9. Learned advocate for the petitioner submitted that as per clause (a) of the consent terms, the learned Trial Court was directed to decide the proceedings finally on or before 31st December, 2019, but due to lack of cooperation from the wife, rather on account of the delaying tactics adopted by the wife, the proceedings could not be completed before 31st December, 2019. Therefore, wife is not entitled to receive maintenance as per order dated 8th February, 2019.

10. In needs to be noted that the order dated 8th February, 2019 has not been set aside in the Appeal. The consent terms, as observed earlier, are not conditional. The non-cooperation, if any, by the wife can be taken care of by the learned Magistrate by passing appropriate orders. But non-cooperation in disposing of the matter finally cannot be a ground, in the facts of the present case, to extinguish right of receiving maintenance by virtue of order dated 8th February, 2019. Therefore, it is not possible to accept the contention of the petitioner that due to non-cooperation in disposing of the proceedings, right created under order dated 8th February, 2019 is extinguished.

11. Learned advocate for the petitioner, thereafter submitted that the papers of the present matters were not traceable. The advocate for respondent no.1 has reconstructed the papers and circulated the matters without serving on him copy of reconstructed Writ Petition. As per the practice of this Court, the board is notified on the last working day of earlier week. The board is notified either on Friday or on Saturday. Today being Tuesday, learned advocate for the petitioner had sufficient time to prepare himself. Therefore, in my opinion, no legal prejudice is caused to the petitioner by not serving the copy of the Petition. Petitioner has filed the Petition. Obviously advocate for the petitioner has the copy of Petition alongwith annexures thereof. Therefore, in absence of any prejudice, I cannot accept the submission that non-serving of the copy of Petition alongwith reconstructed papers to the learned advocate for the petitioner has caused legal prejudice to the petitioner.

12. Learned advocate for the petitioner states that there is ad-interim relief running in his favour for last three (3) years. In view of the said fact, the said ad-interim relief shall continue for a period of two (2) weeks from today.

13. For the reasons stated above, I find no merits in the Petition.

14. Writ Petition is therefore dismissed. No costs.

(AMIT BORKAR, J.)