

further submits that there was no justification for the learned Judge to issue Recovery cum Arrest Warrant as against the applicant without giving a proper hearing to the applicant, only on the basis of the allegations made against him. He submits that in fact, the applicant has also filed proceedings for initiating action under Section 340, as against the respondent No.2 and that the same is still pending before the Trial Court.

4. Perused the papers and in particular, impugned order dated 7th October, 2021 by which, the learned Metropolitan Magistrate, 12th Court, Mumbai issued recovery warrant as against the applicant. On the last date, time was granted to the learned Counsel for the applicant to take instructions whether the applicant was ready to deposit even 50% of the arrears of the maintenance amount. Learned Counsel for the applicant, on instructions of the applicant, states that the applicant has no means and as such, unable to deposit a single farthing.

5. The respondent No.2 has filed a D.V. complaint as against the applicant in the Court of the learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai alongwith an application seeking interim maintenance. The learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai vide order dated 28th October, 2020 passed below Exhibit-4 seeking interim

relief, allowed the respondent No.2's application, partly. The learned Judge restrained the applicant from committing any act of domestic violence against the respondent No.2 till decision of the main application; and directed the applicant to pay an amount of Rs. 1,50,000/- per month as interim maintenance to the respondent No.2 from the date of filing of the present application.

6. It appears that the said order dated 28th October, 2020 passed by the learned Metropolitan Magistrate has been challenged by the applicant by filing an appeal before the Learned Sessions Judge and the same is pending. Admittedly, the said order dated 28th October, 2020 has not been stayed till date. It appears that in the meantime, as the applicant failed to deposit a single farthing as directed by the learned Metropolitan Magistrate pursuant to the interim order passed by the Metropolitan Magistrate Court, the respondent No.2 filed an application and sought issuance of NBW as against the applicant, as the applicant was in huge arrears of maintenance amount. The learned Metropolitan Magistrate has observed in para 4 of the order dated 7th October, 2021 that the said order dated 28th October, 2020 is still in force and is not stayed or set aside by the higher Court. It is further observed that despite sufficient time and opportunities granted to the applicant, he has failed to deposit the amount.

It also appears that the Magistrate had directed the applicant to deposit part of the arrears of maintenance, however, the applicant failed to comply with the said direction. The learned Judge observed that the applicant has disobeyed the order and no bonafides are shown by him and accordingly, issued recovery cum arrest warrant as against the applicant.

7. As noted above, the applicant's appeal is pending before the Sessions Court. Admittedly, the said order has not been stayed till date. Even this Court impressed upon the learned Counsel for the applicant to deposit atleast part amount of the arrears, however, the learned Counsel for the applicant, on instructions, has expressed his inability to deposit a single farthing.

8. Having regard to the aforesaid, no case is made out warranting interference in the impugned order dated 7th December, 2021, issuing Recovery cum Arrest Warrant against the applicant. Accordingly, the application stands dismissed. However, all contentions of the applicant as well as of the respondent No.2 are kept open before the Appellate Court. The Appellate Court to decide the appeal on its own merits uninfluenced by the dismissal of this petition.

REVATI MOHITE DERE, J.