

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 491 OF 2022**

Jayashree Prashant Bawankar,  
Aged about 37 years,  
Occupation – Household,  
R/o C/o Krushnaji Pagade,  
Ambedkar Ward, Thana Petrol  
Pump, Jawahar Nagar, Bhandara.

.... **PETITIONER**

**VERSUS**

Prashant s/o Anandrao Bawankar,  
Aged about 42 years,  
Occupation – Nurse,  
R/o New Subhedar Layout,  
'Prasad Palace' In front of NIT Garden,  
Flat No.204, Nagpur, Tahsil and  
District Nagpur.

.... **RESPONDENT**

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Mr. P.V. Ghare, Counsel for the petitioner,  
Mr. S.R. Shinde, Counsel h/f. Mr. A.A. Bhendarkar, Counsel for the  
respondent.

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**CORAM : ROHIT B. DEO, J.**  
**DATED : 14<sup>th</sup> MARCH, 2022**

**ORAL JUDGMENT :**

Heard. **Rule.** Rule made returnable forthwith. With consent, the  
petition is heard finally.

2. The petitioner is assailing the order dated 01-12-2021 rendered

by the learned Judge, Family Court, Bhandara in Petition A-4/2021 whereby, allowing application Exhibit 30 preferred by the respondent-husband, the learned Judge directed that the amount of interim maintenance shall be adjusted if the husband regularly pays the higher maintenance granted in Miscellaneous Criminal Application 2/2021. The operative part of the order impugned reads thus :-

- “(i) The application (Exhibit 30) is hereby allowed.
- (ii) The amount of interim maintenance granted in the present proceeding is adjusted if the respondent will regularly pay the higher maintenance amount granted in Misc. Cri. Appln. No.02/2021.
- (iii) In default, the petitioner is at liberty to execute the Order passed under section 24 of the Hindu Marriage Act.
- (iv) Parties to take note.”

3. Application Exhibit 30 preferred by the husband is styled as an “application for adjustment of maintenance amount”. The cryptic application states that since in separate proceedings instituted under the Protection of Women from Domestic Violence Act, 2005 (DV Act) the learned Judicial Magistrate First Class has granted monthly interim maintenance of Rs.13,000/- (Rupees Thirteen Thousand), the monthly interim maintenance of Rs.10,000/- (Rupees Ten Thousand) which is granted in the present proceedings be adjusted. The wife opposed the said application *inter alia* contending that the application was not maintainable in law and even otherwise the learned Magistrate has

granted monthly interim maintenance of Rs.5,000/- (Rupees Five Thousand) only to the wife, and the two children are granted monthly interim maintenance of Rs.3,000/- (Rupees Three Thousand). The wife pointed out that Rs.2,000/- (Rupees Two Thousand) per month is granted as rental compensation.

4. The learned Judge of the Family Court took note of several decisions to hold that adjustment of maintenance is permissible. However, the learned Judge of the Family Court has not considered the crucial question, whether a case for such adjustment is made out at all.

5. The learned Judge of the Family Court rendered order dated 15-9-2021 whereby the wife was granted monthly interim maintenance of Rs.10,000/- (Rupees Ten Thousand) from the date of the application. The order of interim maintenance in the proceedings under the DV Act is dated 09-4-2021. While granting interim maintenance to the wife, the learned Judge of the Family Court was alive to the factual position that interim maintenance is already granted in the proceedings under the DV Act. This is clear from plain reading of the order. While in paragraph 8, the learned Judge of the Family Court does record that *prima facie* the interim maintenance granted in the proceedings under the DV Act is not paid to the wife, it cannot be said that such non payment is the basis of the order. *Au contraire*, the learned Judge of

the Family Court referred to the articulation of the Hon'ble Supreme Court in *Rajnish v. Neha and Another, (2021) 2 SCC 324* and the proposition of law that while deciding subsequent maintenance proceedings, the Court must take into consideration the maintenance which was already awarded in the previous proceedings. The learned Judge of the Family Court has with full knowledge and awareness, of the maintenance granted in the earlier proceedings, was pleased to direct the husband to pay the wife monthly maintenance of Rs.10,000/- (Rupees Ten Thousand). The husband, could have assailed the said order, if he were to be aggrieved. However, when maintenance is granted in the subsequent proceedings after duly noting and considering the maintenance granted in the earlier proceedings, the question of adjustment just does not arise. I am afraid, that there is a total misdirection by the learned Judge of the Family Court and the order impugned is clearly unsustainable.

6. The order impugned dated 01-12-2021 rendered by the learned Judge of the Family Court, Bhandara in Petition A-4/2021 is quashed.

7. The petition is allowed in the aforesaid terms.

**JUDGE**

*adgokar*

Digitally signed by PRAFULLA  
MANOHARRAO ADGOKAR  
Signing Date: 21.03.2022 10:33