

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

CIVIL APPLICATION (CAS) NO. 975 OF 2021
IN
SECOND APPEAL NO. 174 OF 2021

Devendra S/o. Sonbaji Dharmik

...VERSUS...

Mousami W/o. Devendra Dharmik

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri M.R.Joharapurkar, Advocate for appellant.

Shri M.Kalar, Advocate h/f. Shri G.G.Bade, Advocate for respondent.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 29th AUGUST, 2022.

The present application is filed by the appellant for grant of stay to the order dated 06/03/2017 passed by learned Judicial Magistrate First Class, Court No. 2, Gondia in Misc. Cri. Application No. 39 of 2013.

2. The present appeal is filed being aggrieved by the judgment and decree dated 02/02/2021 passed by Principal District Judge, Gondia in Regular Civil Appeal No. 84/2018 to the limited extent i.e. granting permanent alimony to the tune of Rs. 15,00,000/- towards maintenance to the respondent and their daughter.

3. The main grievance is that the learned First Appellate Court failed to take note of the fact that the amount of maintenance is already granted by learned J.M.F.C., Gondia by order dated 06/03/2017 in Misc. Cri. Application No. 39/2013.

4. In this appeal, this Court vide order dated 01/09/2021 in Civil

Application No. 517/2021 directed the appellant to deposit Rs. 5,00,000/- for grant of stay to the impugned order of the First Appellate Court awarding permanent alimony of Rs. 15,00,000/-.

5. The learned counsel for the appellant pointed out that the respondent is pressing for recovery of amount before the learned J.M.F.C..

6. The appellant has placed on record the documents along with pursis dated 12/8/2022. The amount so deposited by the appellant is lying with this Court and there is no application for withdrawal of same.

7. The learned counsel for the appellant has relied on the case of **Vishal S/o. Rajesaheb Gore V/s. Apama W/o. Vishal Gore and ors.** reported in **2018 DGLS (Bom.) 258** wherein this Court held that since interim maintenance awarded under D.V. Act is not in addition to amount already granted in any other civil or criminal proceeding, same is certainly liable to be adjusted against amount of maintenance finally awarded under Section 125 of Cr.P.C.

8. This Court had directed the appellant to deposit the amount towards maintenance of respondent and their daughter. As such, the respondent ought to have refrain herself from recovering the amount under Section 125 of Cr.P.C.

9. The learned counsel for the appellant also submitted that to comply with the order, the appellant requires to make certain arrangement and as such, if the recovery under Section 125 of Cr.P.C. is pressed, it would be difficult for the appellant to arrange for such amount.

10. The learned counsel for the respondent opposed the application on the ground that the daughter is not party in this proceeding whereas she is party in the proceeding under Section 125 of Cr.P.C. There is no substance in the contention, as the order passed by this Court on 01/09/2021 also specifically observed that, out of the permanent alimony, which has been awarded, the amount of Rs. 10,00,000/- is granted towards the maintenance of daughter and Rs. 5,00,000/- is granted towards the maintenance of the wife. Certainly, the order passed by this Court takes care of maintenance of wife as well as daughter. As such, it is necessary during the pendency of this appeal to stay the proceedings before learned J.M.F.C., Court No. 2, Gondia in Misc. Cri. Application No. 39/2013. Accordingly, I proceed to pass the following order:-

ORDER

- (1) The application is allowed.
- (2) The effect and operation of order/judgment dated 6/3/2017 passed by learned J.M.F.C., Court No. 2, Gondia in Misc. Cri. Application No. 39 of 2013 is hereby stayed till further orders.
- (3) Liberty is granted to the respondent - wife to apply for withdrawal of amount which is deposited in this Court by the appellant.

(Smt. M.S. Jawalkar, J.)