

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3763 OF 2022

Ajay Devidas Chincholkar .. Petitioner

Versus

Shilpa Ajay Chincholkar and others .. Respondents

Shri Madhav M. Bhokarikar, Advocate for the Petitioner.
Shri Rahul G. Joshi, Advocate for the Respondent No. 1.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 02ND JANUARY, 2023.**

FINAL ORDER :

. The petitioner is aggrieved by the order dated 20.12.2021 passed below Exhibit 05 in Petition No. C-4/2020, whereby the Principal Judge, Family Court, Aurangabad has partly allowed the application below Exhibit 05 and the petitioner herein was directed to pay a sum of Rs. 20,000/- per month as interim maintenance to the respondent No. 1 and Rs. 10,000/- per month as interim maintenance to respondent Nos. 2 and 3 each aggregating to Rs. 40,000/- per month.

2. Heard learned counsel appearing for parties.

3. Learned counsel for petitioner submits that the impugned order of the Family Court granting interim maintenance of Rs. 40,000/- per month to the respondents does not take into consideration order of maintenance passed by the learned Judicial Magistrate First Class (Court No. 13) Aurangabad in P. W. D. V. A. Application No. 240 of 2020 filed under the provisions

of the Protection of Women from Domestic Violence Act, 2005 (for short “ D. V. Act”). He further submits that after filing of an application for interim maintenance before the Family Court, Aurangabad, the petitioner had filed his reply to the interim application and the matter was closed for orders. Subsequently the order of the J. M. F. C. Aurangabad in the proceeding under the D. V. Act was passed granting maintenance of Rs. 20,000/- and the same was placed on record by both the parties before the Family Court, but same has not been considered by the Family Court. He submits that order passed in the proceedings under the D. V. Act granting maintenance of Rs. 20,000/- has been obeyed and maintenance is been regularly paid.

4. *Per contra*, learned counsel for respondent No. 1 submits that there is no bar for grant of maintenance by the Family Court despite order being passed by the J. M. F. C. under the D. V. Act.

5. I have considered rival submissions of the parties.

6. The order under D. V. Act was passed on 30th November, 2021 and the order of the Family Court granting interim maintenance has been passed after a period of one month i. e. on 20th December, 2021. After perusal of the impugned order it is clear that the impugned order dated 20th December, 2021 of the Family Court does not take into consideration interim maintenance which is already been granted by the J. M. F. C. in the D. V. Act proceedings. Learned counsel for the respondent No. 1 is right in submitting that the relief which has been granted under the D. V. Act as regards maintenance do not

constitute a bar for considering an application for interim maintenance under the personal laws. In my opinion, while considering the application for interim maintenance under the provisions of the Hindu Adoption and Maintenance Act, the amount which is already been granted to the respondents in the proceedings under the D. V. Act ought to have been taken into consideration and appropriate amount of maintenance is required to be granted by the Family Court, which has not been done in the present case.

7. Considering the above, in my view, it would be in the interest of both the parties that the matter is remanded to the Principal Judge, Family Court, Aurangabad to consider the application filed by respondents for interim maintenance U/Sec. 18 and 20 of the Hindu Adoption and Maintenance Act afresh by taking into consideration the order of maintenance passed in D. V. Act proceedings.

8. In the light of the above, the writ petition is partly allowed. Matter is remanded to the Principal Judge Family Court, Aurangabad for considering application below Exhibit 05 afresh. Liberty granted to the parties to place on record order passed by the J. M. F. C. Aurangabad in the proceedings filed under the D. V. Act granting maintenance of Rs. 20,000/- to the respondents. The Principal Judge, Family Court, Aurangabad is directed to decide the application afresh by taking into consideration the order of the J. M. F. C. Aurangabad dated 30th November, 2021 and such further documents as may be presented by both the parties and decide the said application as expeditiously as possible and in any event preferably within a period of eight (08)

weeks from the date of this order. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23