

VRJ

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

WRIT PETITION NO.1537 OF 2020

Smithaa Adhikari

... Petitioner

V/s.

Paresh Adhikari

... Respondent

Mr. Hrishikesh Chavan a/w Mr.Anand Damle with
Praneetkumar Mhaske for the petitioner.

Ms. Kanupriya Kejriwal a/w Ms. Prachi Singh i/by
Yasmin Bhansali & Co. for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 13, 2023

P.C.:

1. The petition is directed against the legality and validity of order dated 11th October, 2019 passed by the learned Judge, Family Court No.3, Mumbai in A-862 of 2014, below Exhibit-35.

2. The wife filed an application below Exhibit-35 seeking following prayer:

“9. Under the circumstances, I pray before this Hon’ble Court to consider this and direct the respondent to forthwith produce his latest salary slip in this Hon’ble Court and continue paying EMI’s till the pendency of this petition and clear all the arrears of Kandivali house forthwith. Thus, it is in the interest of justice, equity and conscience that the respondent is directed to forthwith pay and continue/clear the dues of EMI. And not default in future till the final disposal of this matter.”

3. While considering such application, the learned Judge,

Family Court No.3, Mumbai passed following order:

“2. The wife is hereby directed to pay 60% of the remaining E.M.I. amount of housing loan and husband is directed to pay 40% of the remaining E.M.I. amount of housing loan from the date of this order.”

4. Considering the prayer sought by the wife seeking direction against the husband, in my opinion, the learned Family Court could not have directed the wife to pay 60% of the remaining EMI amount of housing loan. Such direction would mean grant of relief to a party who has not sought such relief. At the most, the learned Judge would have either allowed the application, partly allowed the application or dismissed the application. But passing of order against the applicant to his detriment is not permissible. Therefore, in my opinion, clause 2 of the order dated 11th October, 2019 directing the wife to pay 60% of EMI amount of housing loan cannot be sustained.

5. It is made clear that if the husband desires to seek such relief, he shall be entitled to file such application if permissible in law. If such application is filed, the learned Judge, Family Court No.3, Mumbai shall decide such application in accordance with law.

6. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)