

AGK

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

**WRIT PETITION NO.2924 OF 2022
WITH
INTERIM APPLICATION NO.2670 OF 2022**

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Swati Sachin Potdar

... Petitioner

V/s.

Sachin Sunil Potdar & Anr.

... Respondents

Mr. Ameya Mahadik with Ms. Sunita Khamkar for the petitioner.

Mr. Ravindra Vishnu-Laxmi Sankpal for respondent nos.1 & 2.

Ms. M.R. Tidke, APP for respondent no.3/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 5, 2023

P.C.:

1. The petitioner/wife has challenged order dated 8th March 2022 passed by the learned In-charge Judge, Family Court No.7, Mumbai below Exhibits 7 and 8 in Miscellaneous Application No.20 of 2021 rejecting application for interim relief of residence, protection order and maintenance.

2. On perusal of the impugned order, it appears that the relief of interim maintenance has been rejected only on the ground that the applicant/wife is earning amount of Rs.23,000/- per month. It was necessary for the Family Court to take into consideration

factors mentioned by the Apex Court in paragraphs 77 to 92 in **Rajnish v. Neha** reported in (2021) 2 SCC 324 while arriving at the conclusion in relation to payment of interim maintenance. Merely because the wife is earning, by itself is not sufficient ground to deny the wife interim maintenance.

3. In relation to the reliefs of streedhan and protection order, it appears that the Family Court has recorded a finding that there is no clarity in the document as to whether the articles are received by the wife, or not. It was necessary for the Family Court to record prima facie finding about the entitlement of the petitioner for streedhan and protection order as claimed in the order. It is not necessary for the Family Court to record a conclusive finding on the rights of the parties which can obviously be decided at the time of final disposal of the petition, but at the prima facie stage, on the basis of material on record, it was necessary for the Family Court to record a prima facie finding regarding entitlement of the parties. In absence of such inquiry, the decision-making process by the learned Family Court is contrary to law. Hence, following order:

- a) The impugned order dated 8th March 2022 passed by the learned In-charge Judge, Family Court No. 7, Mumbai below Exhibits 7 and 8 in Miscellaneous Application No.20 of 2021 is set aside;
- b) Learned Family Court No.7 is directed to decide the applications below Exhibits 7 and 8 in accordance with law by granting opportunity of hearing to both the sides in light of the

observations made in the body of this order;

c) The said exercise shall be completed within two (2) weeks from today.

4. The writ petition stands disposed of in above terms. No costs.

5. The interim application does not survive and stands disposed of accordingly.

(AMIT BORKAR, J.)