

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****INTERIM APPLICATION NO. 2747 OF 2023****IN****REVISION APPLICATION NO. 430 OF 2022****Rama Dinesh Lahoti****..... Applicant****VERSUS****Dinesh Harikishan Lahoti****..... Respondent**

Mr. Makrand M. Kale for the Applicant.

Ms.Sadhana Datar for the Respondent.

CORAM: RAJESH S. PATIL, J.**DATE : 9th NOVEMBER, 2023****P.C. :-**

This interim application is filed in a disposed of civil revision application. This interim application seeks to recall the order dated 27th January, 2023 and further an order dated 6th April, 2023.

2. It is the case of the applicant (wife) in the interim application, that the order dated 27th January, 2023 was passed without hearing the respondent wife therein. It is further stated that on 27th January, 2023, the criminal revision application was on board at serial no.8. It is submitted before this Court by the learned advocate Mr.Kale that on

the said day, it was mentioned on the board itself that only matters from serial nos. 1 to 7 would be taken up and the rest of the matters will not be taken up from serial no.8. Mr.Kale further submits that hence, under the *bonafide* belief, he did not attend the Court Hall where the matter was supposed to reach on that day.

3. Ms.Datar, learned advocate appearing on behalf the respondent husband submits that factually it is incorrect. According to her, the board was never discharged on 27th January, 2023, hence she attended the matter when the matter was called out.

4. It seems that on 27th January, 2023, the matter was taken up when nobody appeared for the respondent. Following order was passed in the criminal revision application and the criminal revision application of the husband was disposed of. The said order reads as under:-

Heard. Perused order impugned herein. Vide order dated 3 December 2021, Additional Sessions Judge, Sangli, has enhanced the maintenance amount from Rs.4,000/- per month, to Rs.7,000/- per month. A sum of Rs.3,000/- has also been directed to be paid towards provision of separate accommodation. Since it is an interim order, the Applicant-husband can very well, on

merits of the matter, if makes out his case of being unable to pay, the quantum may even vary on the lower other side order of the quantum of interim maintenance. In view of the same, the court is not inclined to issue notice.

2. Application stands dismissed.

3. Learned Magistrate is requested to decide the application on its own merits within a time-frame of three months from the date of receipt of copy of this order.

5. Today, advocate Ms.Datar agrees that there is a *bonafide* mistake in the order dated 27th January, 2023, as it is recorded in the first paragraph, line (5) that the impugned order passed by the Lower Court is 'interim order'. According to her, a final order was passed by the Sessions Court. Hence, the challenge was to a final order, therefore instead of the words 'interim order', it should be 'impugned order'.

6. Learned advocate Mr.Kale appearing for the wife submits that as of today, there is an outstanding amount of Rs.2,50,000/- on account of maintenance and rent. Learned advocate Ms.Datar submits that according to her instructions only Rs.80,000/- is outstanding on account of maintenance and rent. She further submits that her client is unable to pay any amount on account of maintenance and rent as he has

no money to pay.

7. On a query put up by this Court whether Mr.Dinesh Lahoti (husband) is staying in Flat No.502, 'A' Wing, Maxima Housing Society, Shankar Kalat Nagar, Wakad, Pune?, learned advocate Ms.Datar submits that she is not aware whether this residence belongs to her client or not. Ms.Datar further submits that she has no instructions from her client. She further submits that her client is not giving her any instructions.

8. Heard. I have considered all the material on record including the fact that on 27th January, 2023, when the civil revision application was disposed of, none appeared on behalf of the respondent. It seems that the Court was under an impression that what was under challenge was an interim maintenance order, hence by this Court order, the learned Magistrate was directed to decide the maintenance application within the time frame of three months. However, the impugned order passed by the learned Magistrate Court and as confirmed by the Sessions Court was not set aside.

9. Therefore, in such a situation, the order dated 27th January, 2023 is modified and the part of paragraph no.(1) from the line '*Since it is an interim order, the Applicant-husband can very well, on merits of the matter, if makes out his case of being unable to pay, the quantum may even vary on the lower other side order of the quantum of interim maintenance. In view of the same, the court is not inclined to issue notice.*' **stands deleted**. So also paragraph nos.2 and 3 of the order dated 27th January, 2023, wherein the learned Magistrate was directed to decide the application within three months, also stands deleted.

10. In view of the same, the further order dated 6th April, 2023 wherein by way of speaking to the minutes of the order dated 27th January, 2023, an extension of time to decide the matter within three months by the learned Magistrate also automatically gets deleted.

11. In the interim period, the applicant (husband) is permitted to deposit the outstanding amount in the bank account of the respondent no.1.

12. Interim application stands disposed of.

13. This criminal revision application will be heard afresh on **30th November, 2023**. Matter to come up 'First on Board', to be heard along with Criminal Writ Petition (St.) No.1027 of 2023.

14. Advocate Mr.Kale undertakes to serve a copy of the Criminal Writ Petition (St.) No.1027 of 2023 along with enclosures on respondent husband by all permissible modes of service.

[RAJESH S. PATIL, J.]