

SA Pathan

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

WRIT PETITION NO.1714 OF 2023

Zamarrud Akhtar Khan

... Petitioner

V/s.

Nilofer Akhtar Khan

... Respondent

Mr. Abhijit Sarwate a/w. Ms. Hardev K. Aiden i/by Mr.
Ajinkya M. Udane for the Petitioner.

Ms. Rashida Siddhiqui i/by Mr. Kevin Gala for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 16, 2023

P.C.:

1. The Petitioner has challenged order dated 21st October, 2022 passed below Exhibit-20 in Petition B No. 40 of 2021 by the Family Court, Pune rejecting the Application for injunction, discovery, deposit the amount in the Court.

2. On perusal of the impugned order, it appears that the Court has considered merits of the main Petition while rejecting the Application. While deciding the Application by a party seeking a relief in terms of provisions of a statute, the adjudication must be made on the basis of parameters laid down under the statute which entitles such party to file such Application. The first thing, which the Court is required to adjudicate is to identify statutory provision which creates rights in favour of the litigant. After

ascertaining such provision, the Court must consider the facts of the case and adjudicate dispute on facts. After adjudication on dispute on fact, the Court must apply provisions of law. The decision making process by the Court must reflect all these factors.

3. On perusal of the impugned order, neither the provisions are entitling the Petitioner to file such Application have been referred nor the relevant provisions of law have been considered. It is well settled that while considering interlocutory applications, conclusive findings on merits of the Petition cannot be recorded, prima facie findings on merits can be recorded.

4. In that view of the matter, the impugned order exceeds the scope of Application. Hence, the impugned order dated 21st October, 2022 passed by Family Court No.4, Pune in Petition B No.40 of 2021 below Exhibit 20 is quashed and set aside. The Family Court, Pune shall decide Application below Exhibit 20 afresh in accordance with law without influence by the observations made in the present order in relation to the facts of the case.

5. The Writ Petition is disposed of.

(AMIT BORKAR, J.)