



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 108 OF 2023

NILESH HARIBHAU PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for the Petitioner : Mr. Bhagwat Nilesh N.

APP for Respondent/State : Mrs.D.S. Jape

Advocate for Respondent no.2 : Mr.Patni Pramod Fulchand

...

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th August, 2024.

P.C.:

1. By this writ petition, the petitioner is challenging the order passed below Exhibit-63, 71 and 73 by the Judicial Magistrate, First Class, Khultabad (for short, "trial Court") to redetermine the amount of recovery of warrant.

2. It is contention of the learned counsel for the petitioner that respondent no.2 is wife of the petitioner. Respondent no.2 has filed application under the Protection of Women from Domestic Violence Act before the trial Court. In the said proceeding, she was claiming maintenance from the petitioner. During the pendency of that application, compromise was taken place between the petitioner and respondent no.2 and in the said compromise, it is settled that the petitioner would give 87 Are land to respondent no.2 and she will stay with the petitioner along with two children. Thereafter, respondent no.2

stayed with the petitioner for around seven months. Thereafter, due to dispute she left company of the petitioner and she is residing separately with two children. The learned counsel further submitted that then the respondent no.2 pursued application for granting maintenance. After hearing both the parties, the trial Court had granted interim maintenance of Rs.3,000/- to respondent no.2 and two children. Then the respondent no.2 preferred appeal against the said order. The learned Sessions Judge has enhanced the maintenance amount from Rs.3,000/- to Rs.9,000/- without any ground, which is erroneous. The learned counsel further submitted that the trial Court has granted interim maintenance amount from the date of application without considering the cohabitation period of the respondent no.2 with the petitioner, which is erroneous, hence requested to allow the writ petition.

3. It is contention of the learned counsel for respondent no.2 that as per the settlement between the petitioner and respondent no.2, the land is transferred in the name of children. Respondent no.2 has no source of income. She has to take care of two children. While passing the order, the trial Court has considered all the aspects. As the petitioner has not followed terms and conditions of the compromise deed, hence the order passed by the trial Court is legal and valid and no interference is required in it and requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned order passed by the trial Court. The trial Court has granted interim maintenance from the date of application. It appears from the record that after passing the order by the trial Court, respondent no.2 challenged the said order before the Sessions Court. The Sessions Court enhanced the maintenance amount from Rs.3,000/- to Rs.9,000/- by order dated 06.10.2021 and the said enhancement was done from 06.10.2021. After passing the order, there was settlement between the petitioner and respondent no.2 and respondent no.2 stayed with the petitioner from 20.11.2021 to 24.06.2022. Thereafter, the trial Court has issued warrant against the petitioner for depositing the maintenance amount. The said warrant is under-challenge on the ground that the petitioner is not entitled for paying the amount for the period when respondent no.2 and children stayed with the petitioner. I find substance in the contention of the learned counsel for the petitioner that respondent no.2 stayed with the petitioner from 20.11.2021 to 24.06.2022 and for the said period, respondent no.2 is not entitled for the maintenance. Excluding this period, the petitioner shall deposit arrears of maintenance amount before the trial Court within three months from today namely, 50% amount shall be deposited within one month and rest of 50% amount shall be deposited thereafter within two months. The maintenance application is pending before the trial Court, hence the contentions of both the parties are

kept open.

5. It is contention of the learned counsel for the petitioner that respondent no.2 is not permitting the petitioner to meet their children. The learned counsel for respondent no.2 submits that as per the interim order passed in Civil Misc. Application No.409 of 2022 dated 1st September, 2023 by the Sessions Court in the application under the Guardian and Wards Act, respondent no.2 is ready to provide access of her children to the petitioner. His statement is accepted. The respondent no.2 shall provide access of children to the petitioner as per the order passed by the learned Sessions Judge.

6. As per order below Exhibit-63 recovery warrant is issued against the petitioner, as per order below Exhibit-71 arrest warrant is issued against the petitioner and as per order below Exhibit-73, the trial Court has observed that the said Court is not authorized to re-determine the amount of maintenance. As observed earlier, the main maintenance application is pending before the trial Court. The contentions of both the parties are kept open. If the petitioner failed to deposit arrears of maintenance amount as agreed before this Court, the trial Court can pass appropriate order.

7. In view of above, the order passed below Exhibit-63, 71 and 73 by the Judicial Magistrate, First Class, Khultabad is quashed and set aside.

8. The writ petition is disposed of.

sga

[SHIVKUMAR DIGE, J.]