



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. REVISION APPLICATION NO. 33 OF 2024

Prakash Arjun Birhade.

...Applicant.

Versus

Rekha Prakash Birhade and Another.

...Respondents.

Ms. Kiran Desai for the applicant.

Coram : Sharmila U. Deshmukh, J.

Date : January 19, 2024.

P. C. :

1. Heard.
2. By this revision application, the challenge is to the order dated 7th November 2023 directing the applicant to deposit 50% of the arrears of maintenance awarded by the trial Court as condition of stay.
3. The proceedings have been instituted by the respondent – wife under the Protection of Women from Domestic Violence Act, 2005 [for short “DV Act”] in which an application came to be filed claiming interim maintenance. Vide order dated 22nd April 2015, the applicant was directed to pay interim maintenance @ Rs.30,000/- per month to the respondent – wife. The order indicates that the respondent – wife

does not have any source of income and there is one daughter born of the said wedlock. The order further indicates that despite service of notice, none appeared for the applicant and as such an ex-parte order came to be passed directing the payment of maintenance. Despite the order of maintenance being passed against the applicant, no steps were taken by the applicant either to set aside the order or to comply with the order for a period of 7 years. It is only upon the distress warrants being issued against the applicant, that the applicant approached the Sessions Court seeking stay of the order dated 22nd April 2015 passed by the Magistrate.

4. Learned counsel appearing for the applicant has only one submission that the applicant is financially incapable of making payment. She would further add that the applicant has been paying certain amount to the respondent-wife intermittently and as such the order of payment of maintenance be stayed.

5. The order of magistrate clearly records that the respondent-wife has no source of income and there is a child born of the said wedlock. The order has been passed in the year 2015 and for a period of almost 7 years nothing has been done by the applicant. It is not the case of applicant that he was not served with the notice. As such, the proceedings were fully within his knowledge and despite thereof he

chose not to comply with the order of magistrate directing payment of interim maintenance @ Rs.30,000/- per month for a period of 7 years and neither filed appeal challenging the order.

6. The Sessions Court by the impugned order has rightly recorded that the respondent-wife is a destitute lady having school going daughter with her and her interest will have to be protected. In that view of the matter, the Sessions Court has granted stay subject to deposit of 50% of the arrears of maintenance. No fault can be found with the discretion exercised by Sessions Court directing the deposit of 50% of arrears of maintenance as a condition of stay. It is for the applicant to show his *bona fide* by depositing the amount. The plea of financial incapacity cannot be considered especially when the applicant has chosen not to participate in the proceedings. The revision being devoid of merits is dismissed.

7. In view of the disposal of revision, pending application, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]