

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2594 OF 2023

Rahul Malik And Ors.

...Petitioners

Versus

Silkina Kaur And Anr

...Respondents.

Adv. Subhash Jha i/b Ms. Raveena S. Yadav, for the Petitioners.

*Adv. Shashank Sardesai a/w Ms. Anoushka Goyal, Ms. Bharati Aindley, for
Respondent No. 1.*

Ms. M. R. Tidke APP for the Respondent State.

Coram : Sharmila U. Deshmukh, J.

Date : April 15, 2024.

P. C. :

1. Heard
2. By this Petition the challenge is to the order dated 23rd February, 2023 passed by the Appellate Court in Appeal filed under Section 29 of Protection of Women from Domestic Violence Act, 2005 (D.V. Act), rejecting the application for stay of order of Trial Court.
3. By order dated 25th August, 2022, the Trial Court had granted interim maintenance of Rs. 60,000/- per month to the Respondent-wife. As against this the Petitioner-husband approached the Appellate Court under Section 29 of the D.V. Act and the Appeal is pending for

adjudication.

4. Learned counsel for the Petitioner would submit that the order of the Trial Court does not deal with the Affidavit of Assets and Liabilities filed by both the parties. He would further submit that the Trial Court after holding that the Respondent-wife is earning sufficient income has thereafter declined to reject the prayer for interim maintenance. He would further submit that in view of the cryptic order passed by the Trial Court, the execution of the order of the Trial Court ought to have been stayed pending the hearing of the appeal. He would further submit that the Affidavit of Assets and Liabilities filed by the Respondent-wife would support the case of the Petitioner for stay as there is suppression of facts.

5. *Per contra*, learned counsel for the Respondent-wife would submit that the Appellate Court can go into the details of the Affidavit of Assets and Liabilities filed by the parties and arrive at a finding after hearing the parties. He submits that considering that the Trial Court has granted a sum of Rs. 60,000/- towards maintenance by holding that the income tax returns produced by the Petitioner are for the purpose of depriving the Respondent-wife rightfully claimed the interim maintenance, no stay ought to be granted to the order of the Appellate Court.

6. Perusal of the order of the Trial Court *prima facie* indicates that the Trial Court while assessing the quantum of maintenance has not given any reasoning to support the quantum by considering the affidavit of assets and liabilities filed by the parties. The mandate of the Apex Court in the case of ***Rajnish vs Neha [AIR 2021 SUPREME COURT 569]*** is very clear and the manner in which the quantum of interim maintenance has to be arrived at as well as the factors which are required to be taken into consideration are set out in the said decision. *Prima facie*, it appears from the order of the Trial Court that the guidelines which are set out by the Apex Court in the decision of ***Rajnish vs Neha (supra)*** has not been followed by the Trial Court. Be that as it may. The Appellate Court under Section 29 of the D.V. Act can go into the said aspect and considered the quantum of maintenance to be granted, if any, after considering the material which have been produced by both the parties.

7. As the order of the Trial Court does not disclose any reasoning sufficient to support the grant of maintenance to the Respondent-wife and considering that the appeal is pending for adjudication, in my view, the order of the Trial Court dated 25th August, 2022 can be stayed pending the hearing of the Appeal and the hearing of the Appeal can be expedited.

8. In light of the discussion above, the impugned order dated 23rd February, 2023 rejecting the application for stay is quashed and set aside. The execution of the order dated 25th August, 2022 is stayed till the hearing of Appeal No. 288 of 2022.

9. Considering that it is an order of maintenance which has been stayed and the appeal is of the year 2022, the Appellate Court is requested to decide the appeal expeditiously and in any event within a period of 8 weeks from today.

10. This Court is informed that the appeal is listed for hearing on 8th July, 2024 before the Appeal Court. Considering the order passed today, the parties are directed to appear before the Appellate Court on 22nd April, 2024. It is clarified that the Appellate Court is to decide the appeal on its own merits and uninfluenced by the observations made herein. All contentions of both parties are expressly kept open.

11. Petition stands disposed of in above terms.

[Sharmila U. Deshmukh, J.]