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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 220 OF 2024
IN
WRIT PETITION NO. 8533 OF 2018**

Mayuri Dipesh Nagla ... Applicant

IN THE MATTER BETWEEN

Dipesh Nagla ... Petitioner

vs.

Mayuri Dipesh Nagla ... Respondent

Mr. Suresh Kamble i/b. Kasturi G. Narkar, for Applicant.

Mr. Pankaj Bandekar through VC a/w. Pranali Girap, for
Respondent.

Mr Sanjay D. Rayrikar, AGP for Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 12th AUGUST 2024

ORDER:

1. This application is filed by the applicant-wife for withdrawal of the amount towards interim maintenance deposited by the respondent-husband in this court. Learned counsel for the applicant-wife submits that the petition was filed by the respondent to challenge the order of interim maintenance directing him to pay monthly maintenance of Rs. 10,000/- during the pendency of the petition filed before the Family Court. He submits that the writ

petition is dismissed pursuant to the conditional order dated 9th June 2023. He further submits that the main petition for divorce filed by the applicant-wife has been dismissed and respondent-husband's petition for restitution of conjugal rights is allowed. Learned counsel for the applicant further submits that Family Court Appeals, challenging the common judgement and order dated 3rd February 2023, are filed in this court and the same are pending before the Hon'ble Division Bench.

2. Learned counsel for the applicant-wife submits that through present applicant-wife has prayed for withdrawal of the amount, the applicant-wife was and is always ready and willing to amicably settle the dispute. Even today, she is ready for an amicable settlement. He submits that since, the applicant started working, she would not insist for any maintenance; however, the respondent-husband should agree for dissolution of the marriage. Considering the submissions made on behalf of the parties, the present application was adjourned by an order dated 15th July 2024, to enable the parties to make an attempt to amicably settle the dispute.

3. On 31st July 2024, the advocate on record who appeared for respondent had no instructions and she had asked for time as her arguing counsel was unwell. Hence, the application was directed to

be listed today. Even today, the applicant-wife is agreeable for an amicable settlement and ready to give up her right to claim maintenance, provided the respondent agrees for dissolution of marriage. Learned counsel for the applicant submits that since the petition challenging the order of interim maintenance stands dismissed, the applicant-wife is entitled to withdraw the amount deposited by respondent-husband in this court towards arrears of maintenance.

4. Learned counsel for the respondent-husband submits that the respondent would be agreeable for dissolution of marriage provided the applicant-wife compensates him for the amount which he seeks to claim against her. He further submits that since the application for divorce filed by the applicant stands dismissed and the respondent's application for restitution of conjugal rights is allowed, the applicant would not be entitled to claim any maintenance from the respondent. It is not in dispute that the respondent has not filed any proceedings to claim compensation from the applicant. Thus, there is no basis for claiming compensation from the applicant.

5. Learned counsel for the respondent relied upon an endorsement made on behalf of the applicant-wife on an application filed by the respondent-husband for setting aside the order of

interim maintenance. Learned counsel for the respondent submits that the applicant-wife had given no objection for setting aside the order of interim maintenance. He thus submits that since the applicant has her own source of income, she has given up her right of interim maintenance.

6. I have considered the submissions made by both the parties. It is not in dispute that the amount deposited in this Court is pursuant to the order granting maintenance by the Family Court during pendency of the proceeding for divorce. It is further not in dispute that the petition filed by the respondent-husband challenging the order of interim maintenance stands dismissed. Admittedly, there was never an application filed for restoration of the Writ Petition. Thus, in view of dismissal of the Writ Petition, the order of interim maintenance passed by the Family Court stands confirmed.

7. I have perused the application at Exhibit-48A which was tendered by the learned advocate for the respondent. The said application was filed on 22nd December 2022, for setting aside the order of interim maintenance. On the said application there is an endorsement made on behalf of the applicant-wife that she has no objection and that she would not press for any application for interim maintenance. The said endorsement is made on 22nd December

2022. The amount towards arrears of maintenance deposited in this court is from the date of filing of the application at Exhibit-14 before the Family Court till 14th January 2020. Thus, the endorsement made by the applicant-wife on 22nd December 2022 cannot be a ground to refuse the applicant's prayer for withdrawal of the amount which is deposited towards arrears of maintenance only upto 14th January 2020.

8. On making a specific query to the learned counsel for the respondent as to whether the respondent would be agreeable to put an end to the dispute, he submits that the respondent would be agreeable to dissolution of marriage, only if, the applicant pays him an amount towards compensation which according to the respondent, the applicant-wife is liable to pay towards various expenses incurred by the respondent.

9. Once the order of interim maintenance stands confirmed and the amount sought to be withdrawn by the applicant is prior to the date of applicant not pressing any interim maintenance, I do not see any reason not to allow the applicant to withdraw the amount deposited by respondent in this court. I do not find any substance in the objections raised on behalf of the respondent-husband that he is entitled to seek any compensation from the applicant.

10. Hence, for the reasons stated above, the application is allowed in terms of prayer clause(a).

11. Office is directed to release the amount in favour of the applicant-wife on production of authenticated copy of this order.

12. At this stage, learned counsel for the respondent seeks a stay of this order. I do not see any reason to grant stay to this order, in view of the reasons recorded above. Hence, the prayer is rejected.

(GAURI GODSE, J.)