

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 388 of 2024

Ujwala Hemant Rasal & Ors

...Petitioners

Vs.

Hemant Jayram Rasal & Ors.

...Respondents

Mr. Bhavik Pratap Manek through Legal Aid for the Petitioners.

Mr. Raju Suryawanshi for Respondent Nos. 1 to 3

Mr. A.R. Metkari, APP for Respondent No.4.

CORAM : ARIF S. DOCTOR, J.

DATE : 10TH DECEMBER, 2024

P.C.:-

1. The captioned Writ Petition impugns an Order dated 16th December 2022 (Impugned Order) passed by the District Judge at Kalyan (Appellate Court) in DV Appeal No.3 of 2022 by which an Order dated 26th November 2021 passed by the Judicial Magistrate First Class -III, Kalyan (Trial Court) has been set aside.

2. Before advertng to the rival contentions, it is useful for context, to set out the following facts, viz.

- i. Petitioner No.1 (wife) and Respondent No.1 (husband) got married on 22nd February 2007. Petitioner Nos. 2 to 4 are the three children out of the wedlock and Respondent Nos. 2 and 3 are the parents of Respondent No. 1 i.e. the in-laws of Petitioner No. 1.
- ii. On 17th March 2015 the Petitioners filed a complaint before the Trial Court against the Respondents under provisions of Protection of Women from Domestic Violence Act, 2005 (DV Act) in which the Petitioners had also filed an application for interim reliefs seeking maintenance. The Trial Court had, vide an Order dated 13th August 2015 had partially allowed the said application by ordering Respondent No.1 to pay Rs.2000/- per month to Petitioner No.1 and Rs.1000/- per month to each of the three children i.e. Petitioner Nos.2 to 4 as maintenance till the proceedings before Trial Court were concluded.
- iii. Since it was the Petitioners' contention that Respondent No. 1 had failed and neglected to comply with the Order dated 13th August 2015, Petitioner No.1 filed an application for execution of the Order dated 13th August 2015. The Trial Court then, vide an Order dated 25th February 2021 issued a distress warrant against Respondent No.1 (husband) *inter alia* noting that Respondent No.1 had not paid arrears of maintenance to an extent of Rs.2,15,000/-.

- iv. Respondent No. 1 (husband) thereafter made an application to the Trial Court seeking cancellation of the distress warrant *inter alia* on the ground that Respondent No.1 was admitted to a rehabilitation center from 21st January 2017 to 5th May 2019 during which period Respondent No.2 had paid the Petitioners Rs.15,000/- per month which amounted to a total of Rs.6,40,000/- till the date of the filing of the said Application. The said Application however came to be rejected by the Trial Court vide the Order dated 26th November 2021 *inter alia* on the ground that the order of the Trial Court was then challenged in Appeal by the Respondents. The Appellate Court vide the Impugned Order set aside the order of the Trial Court *inter alia* holding that the Respondents were in compliance with the Order dated 13th August, 2015 and had in fact paid the amount three times than awarded. Thus, the present Petition.
3. Mr. Manek Learned Counsel appearing on behalf of the Petitioners through legal aid, at the outset took pains to point out that the subject matter of the Appeal was not the Order dated 13th August 2015 (by which Respondent No. 1 was directed to pay the interim maintenance) but was the Order passed in execution proceedings seeking cancellation of the distress warrant. He then submitted that by the Impugned Order only the Order directing the issuance of a distress warrant had been set aside and not the Order dated 13th August 2015 by which the Respondents were directed to pay interim maintenance.

4. Mr. Manek then also pointed out that since the Appeal filed by Respondent No. 1 was under Section 29 of DV Act the Appellate Court- erred in law by not directing Respondents to first before entertaining the said Appeal, deposit the entire outstanding amount. In support of his contention, that it was incumbent upon Appellate Court to have first before entertaining the Appeal to have directed Respondent No. 1 to deposit the amount of Rs. 2,15,000/- he placed reliance upon the judgment of the Hon'ble Supreme Court in case of ***Shalu Ojha Vs. Prashant Ojha***¹ from which he pointed out the following, viz.

“23. In a matter arising under a legislation meant for protecting the rights of women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside

24. We are of the opinion that the conduct of the respondent is a gross abuse of the judicial process. We do not see any reason why the respondent's petition Crl. MC No. 1975 of 2013 should be kept pending. Whatever be the decision of the High Court, one of the parties will (we are sure) approach this Court again thereby delaying the conclusion of the litigation. The interests of justice would be better

¹ (2015) 2 SCC 99

served if the respondent's appeal before the Sessions Court is heard and disposed of on merits instead of going into the residuary questions of the authority of the appellate court to grant interim orders or the legality of the decision of the Sessions Court to dismiss the appeal only on the ground of the non-compliance by the respondent with the conditions of the interim order. Criminal Appeal No. 23 of 2012 stands restored to the file of the Sessions Court .

25. We also direct that the maintenance order passed by the Magistrate be executed forthwith in accordance with law the executing court should complete the process within 8 weeks and report compliance in the High Court. We make it clear that such hearing by the Sessions court should only be after the execution of Order of maintenance passed by the Magistrate.”

5. Mr. Manek then invited my attention to the Impugned Order and pointed out that the Appellate Court had while allowing the Appeal considered the Agreement dated 4th January 2017 (“*the said Agreement*”) executed between Petitioner No.1 (wife) and Respondent No.2 i.e. the father-in-law of Petitioner No.1. He pointed out that the said Agreement was admittedly not executed by Respondent No.1 and that even the amount of Rs.15,000/- per month which was to be paid thereunder by Respondent No.2 to the Petitioner for the monthly expenses of Petitioner Nos.2 to 4, was not being paid by Respondent No.2 after the Petitioners had filed execution proceedings before the Trial Court.

6. Mr. Manek then clarified that the amount of Rs.15,000/- per month was being paid by Respondent No.2 to Petitioner No.1 under the said Agreement

and was not towards the Order dated 13th August 2015. He submitted that the Order dated 13th August 2015 was never challenged by Respondent No.1 nor was an application for modification of the said Order ever moved by Respondent No.1. He thus submitted that the said Order was therefore very much still in force. He also then pointed out that the said Agreement had no reference to the Order dated 13th August 2015. He submitted that the Appellate Court had therefore gravely erred in taking the said Agreement into consideration and the payments which were made thereunder to the Petitioners to conclude that the same were in compliance with Order dated 13th August 2015.

7. Mr. Manek then submitted that it was also clear that Respondent No.1 (husband) had also never considered that the amount of Rs.15,000/- paid by Respondent No.2 to the Petitioner under the said Agreement was being paid towards interim maintenance under the Order dated 13th August 2015. In support of his contention he invited my attention to the application dated 23rd March 2022 filed by the Petitioner before the Trial Court seeking issuance of distress warrant and pointed out that the said Application set out that the Respondents were in arrears of an amount of Rs.3,85,000/- towards interim maintenance.

8. Mr. Manek then pointed out that Respondent No.1 had after the issuance of the distress warrant made payment of an amount of Rs.1,75,000/- in multiple tranches while seeking the stay on distress warrant. He submitted that

this alone made evident the fact that Respondent No.1 was always aware of and had acknowledged the fact that he was bound and liable to make payment of the amounts as directed vide the Order dated 13th August 2015 and that the said Agreement was distinct and independent.

9. Mr. Manek then invited my attention to the Order of the Trial Court dated 26th November 2021 which *inter alia* recorded that the amount of Rs.15,000/- was paid towards the said Agreement and not towards the Order of interim maintenance. He pointed out that while by the Appellate Court had on the one hand held that the said Agreement was suspicious, the Appellate Court had on the other hand gone on to place reliance upon the said Agreement to set aside the Impugned Order. He submitted that the said Agreement was never part of the DV proceedings and same was thus rightly disregarded by the Trial Court. He submitted that the Appellate Court had gravely erred in placing reliance upon the said Agreement and on that basis allowing the Appeal. It was thus he submitted that the present Petition ought to be allowed.

10. Mr. Suryawanshi Learned Counsel appearing on behalf of the Respondents submitted that the Appellate Court had vide the Impugned Order merely set aside the distress warrant issued by the Trial Court and nothing more. He submitted that the Impugned Order recorded that Respondent No.2 had infact paid three times the amount which had been Ordered to be paid vide the Order dated 13th August 2015 and it was thus that the distress warrant was set aside.

11. Mr. Suryawanshi then submitted that Appellate Court rightly considered that the said Agreement was executed with the intent to provide the Petitioners funds for monthly expenses i.e. the interim maintenance. He submitted that when the said Agreement was executed, Respondent No.1 was in a rehabilitation center and hence did not execute the said Agreement. He thus submitted that not only was the Order dated 13th August 2015 fully complied with, but also that the Petitioners were getting far more than what had been directed to be paid vide the Order dated 13th August 2015.

12. Mr. Suryawanshi then pointed out that the application for distress warrant was made on the basis that Respondent No.1 was in arrears of payment of maintenance of an amount of Rs.3,15,000/- and that Respondent No.1 (husband) had thereafter admittedly made payment to Petitioner No. 1 of an amount of Rs.1,75,000/-. He thus submitted that it was therefore always open to the Petitioners to make an application for issuance of a distress warrant for the payment of the remaining amount, which according to the Petitioners, was not paid. He submitted that given the extremely limited scope of purport of the Impugned Order, which was only to set aside the distress warrant, and not the Order of interim maintenance itself, the Petition was required to be dismissed.

13. After having heard Learned Counsel for the parties and considering the case law upon which reliance has been placed by the Learned Counsel for the

Petitioners, I find that the Impugned Order requires to be set aside for the following reasons, viz.

- A. It is not in dispute that the Order of the Trial Court dated 13th August, 2015 by which Respondent No. 1 was ordered and directed to make payment interim maintenance to the Petitioners in the aggregate sum of Rs.5,000/- per month has (i) never been challenged by the Respondent No.1 and (ii) nor have the Respondents made any application for modification of the said Order on the basis of the said Agreement. Thus the Order dated 13th August, 2015 is today valid, binding and in force. The conduct of Respondent No.1 in making payment of a sum of Rs.1,75,000/- after issuance of a distress warrant also makes clear that Respondent No.1 was always aware of the fact that the order dated 13th August 2015 was always in force and that Respondent No.1 was in breach/default of the same. Hence, the Appellate Court had, gravely erred in placing reliance upon the said Agreement and basis the same concluded that the Order dated 13th August 2015 was complied on the basis of payment made by Respondent No.2 to the Petitioners under the said Agreement.
- B. The Appellate Court had also erred in law, in these facts, by entertaining the said Appeal without first ensuring that Respondent No. 1 had complied with the interim maintenance. The Appellate Court. had also gravely erred in failing to appreciate that the said Agreement was admittedly not even

executed by Respondent No.1 but was executed only between the Petitioner No.1 and Respondent No.2 and made absolutely no mention of the Order dated 13th August, 2015. Thus the same could in no manner be construed to mean Rs.15,000/- was paid to the Petitioners to comply the Order dated 13th August 2015.

C. Crucially, the fact that the said Agreement had no bearing on the Order dated 13th August 2015 was itself evident from the fact that Respondent No. 1 had after issuance of distress warrant made payment of a sum of Rs.1,75,000/- which is in complete variance to the Respondents' own case that Respondent No.2 had paid an excess of Rs.4,25,000/- to the Petitioners as interim maintenance. Additionally, it was not disputed before me that even the amount of Rs.15,000/- per month to be paid under the said Agreement had not been paid post filing of the execution proceedings before the Trial Court.

D. If it was the Respondent's case that the Rs.15,000/- paid per month under the agreement were also to be computed towards the interim maintenance order, the Respondents ought to have approached the Trial Court. to modify the Order of maintenance which admittedly has not been done.

14. Hence, for the aforesaid reasons, I pass the following Order.

- (a) The Order of District Judge, Kalyan-3 dated 16th December 2022 in DV Appeal 3 of 2022 is set aside.
 - (b) The Order of the Judicial Magistrate First Class 3rd Court, Kalyan dated 26th November 2021 in PWDV Application No.30 of 2015 stands restored.
15. The Petition is disposed of in the aforesaid terms.

(ARIF S. DOCTOR, J.)