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PWDVA No.2 of 2022
Nilima & Ors. X Sachin and Anr.
CNR No.MHCH150001652022

ORDER BELOW EXH. No.20

(Passed on 30/03/2024)

1) The present application is filed by the applicants for recovery of interim maintenance by attaching salary of non-applicant No.1.

2) Perused the application and reply filed by the non-applicants. It is contentions of the applicants that, they have filed the application under Sec.12 of the Protection of Women From Domestic Violence Act (in short the Act) for various reliefs against the non-applicants. The applicants also filed the application vide Exh.5 for grant of interim maintenance under Sec.23 of the Act. The said application is allowed by this Court and the applicants are granted in all Rs.3,500/- per month interim maintenance from the date of the application. Non-applicant No.1 has not paid a single rupee of maintenance amount. Therefore, the applicants are suffering from economic crisis. Non-applicant No.1 has made default in payment of said amount. Therefore, they prayed to allow the application.

3) The non-applicants strongly opposed the application. They contended that, the application is not maintainable. The non-applicants filed H.M.P.No.397 of 2019 wherein interim maintenance order is passed. Therefore, salary of non-applicant No.1 cannot be attached in this case. He is complying the Order of the Court without fail. Lastly, they prayed to reject the application.

4) Heard both the Ld. advocates for the applicants and non-applicants. They submitted as per their contentions of applications and reply. On perusal of record, it appears that, the main proceeding is filed under Sec.12 of the Act for various reliefs. It is admitted that, the interim maintenance application at Exh.5 filed by the applicants is allowed vide order dated 16/09/2023. Non-applicant No.1 is ordered to pay interim maintenance of Rs.2,000/- per month to applicant No.1 and Rs.1,500/- per month to applicant No.2. Thus, an interim maintenance of Rs.3,500/- per month is granted to the applicants.

5) It is pertinent to note that, Sec.28 (1) of the Act provides as; *"28(1). Save as otherwise provided in this Act, all proceedings under Sections 12, 18 to 23 and offences under Sec.31 shall be governed by the provisions of the Code of Criminal Procedure, 1973."* Thus, as per the above provision, it is clear that the Magistrate has to follow the provision of Criminal Procedure Code for the proceeding under Sec. 12, 18 to 23 and Sec.31 of the Act. Needless to say that, the interim maintenance passed under Sec.23 is also governed by the provision of Criminal Procedure Code. Further, the Criminal Procedure Code laid down provisions under Sec.125 (3) for execution of order passed under Sec.125 of the Code. The reliefs available under Sec.125 of the Code of Criminal Procedure are analogous to the reliefs available under under Section 20 and 23 of the Protection of Women from Domestic Violence Act. Thus, there is absolutely clear provision under the

Code of Criminal Procedure, which lays down as to how the amount of maintenance, final or interim, is to be recovered. Therefore, as per Sec.28(1) of the Act, there is a provision for execution of interim order passed under Sec.23 of the Act.

6) I am forfeited with the findings laid down by the Hon'ble Bombay High Court in **Sachin Suresh Bodhale-Vs-Sau. Sushma Sachin Bodhale**, Criminal Writ Petition No. 305 of 2014. The Hon'ble Bombay High Court in the instant case held that, *"It is abundantly clear that basically the learned Magistrate has to follow the procedure laid down in the Code of Criminal Procedure for recovery of maintenance either final or interim. Sub-section (2) of Section 28 of the Act can be pressed into service when there is no provision available for implementing a particular order passed under the Act. If the procedure is available in Code of Criminal Procedure, that is necessarily to be followed."*

7) As stated above, there is clear provision in the Criminal Procedure Code for recovery of maintenance amount either interim or final granted under the Protection of Women From Domestic Violence Act. The applicants have to follow the said procedure for recovery of maintenance amount either interim or final. Thus, in view of above findings, the present application is not maintainable. Hence, I pass the following order;

ORDER

- 1) The application is rejected.

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- 2) The applicants are at liberty to take appropriate steps for recovery of interim maintenance.

Date : 30/03/2024

(Shahaji D. Bhosale)
Judicial Magistrate First Class,
Sindewahi.

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I, Prasad Sureshrao Pohankar, Stenographer of
(Civil Judge (Jr.Dn.) & J.M.F.C. Sindewahi) affirm that, the
contents of this PDF are same words for words, as per the
original order.