



ORDER BELOW EXH.No.21

(Passed on 30/03/2024)

01. This is an application for setting aside interim maintenance order dtd.16/09/2023 passed below Exh.5 and to kept in abeyance the application filed by the applicants for attaching salary of non-applicant No.1 and direction to the applicants for furnishing detail information in proforma.

02. Non-applicant No.1 filed the present application and contended that, the applicants filed an application for interim maintenance under Sec.23 of the Protection of Women from Domestic Violence Act (hereinafter called as 'DV Act'). On 16/09/2023, the said application is allowed and non-applicant No.1 is directed to pay interim maintenance of Rs.2,000/- to applicant No.1 and Rs.1,500/- for applicant No.2. The applicants have not mentioned about the pendency of H.M.P. No.397/2019 filed before the Hon'ble Civil Judge (Sr.Dn.), Chandrapur and order dated 15/06/2022 passed in the said petition. Moreover, the applicants have not mentioned the pendency of proceeding under Sec.125 of the Cr.P.C. The applicants have to mention the information about the said petitions and order passed therein. However, the applicant furnished false information in the affidavit of Asset and Liabilities. Therefore, the order of interim maintenance needs to be set aside. Lastly, he prayed to allow the application.

03. The applicants filed reply and strongly opposed the application. They contended that, non-applicant No.1 has not



mentioned under which section and provision he has filed the present application. Moreover, he has not mentioned whether this Court has power to set aside the interim maintenance order. Non-applicant No.1 has right to appeal against the said order. However, he has not preferred an appeal against said order. This Court has no right to set aside the alleged order. Lastly, they prayed to reject the application.

04. Heard both the sides at length. They submitted as per the contentions of the application and reply. Non-applicant No.1 also filed copy of order dtd.15/06/2022 passed in H.M.P. No.397/2019 (Nilima X Sachin) by the Hon'ble Civil Judge (Sr.Dn.), Chandrapur.

05. On perusal of the affidavit of Asset and Liabilities of the applicants filed at Exh.15, it appears that, the applicants in Part-B of the said affidavit pertaining to details of legal proceeding and maintenance being paid provide information about pending litigations between the parties. The applicants mentioned 2 petitions i.e. Marriage Petition No.397/2019 for restitution of conjugal rights and Criminal M.A.No.95/2018, execution of maintenance. The applicants also furnish information as to maintenance awarded in Cri.M.A.No.38/2016 i.e. Rs.3,000/- to applicant No.1 and Rs.1,500/- to applicant No.2. However, the applicants have not furnished information about the order of maintenance passed in H.M.P.No.397/2019, dtd.15/06/2022.



06. The principal application is filed on 14/03/2022 whereas the affidavit of Asset and Liabilities is filed on 22/12/2022. The applicants furnished detail of proceeding pending between both the parties including H.M.P.No. 397/2019. If the applicants provide information as to the pendency of H.M.P.No.397/2019, then they could have also furnished the information as to order passed therein. It appears that, inadvertently the applicants have not provided the information about order of interim maintenance passed in H.M.P. No. 397/2019. Needless to say that, on 22/12/2022, the non-applicants have filed their reply to the main application below Exh.16. On perusal of said reply, it appears that, the non-applicants nowhere stated about the pendency of H.M.P.No.397/2019 and order passed therein. They have mentioned only about Cr.M.A. No.38/2016 and order passed therein. They could have mentioned about the pendency of H.M.P. No.397/2019 and order passed therein. However, they failed to mention it. If the non-applicants can make mistake of non-furnishing the information about the pending of Marriage Petition, so the applicants can also do the same mistake. Therefore, it cannot be said that, the applicants intentionally did not furnish the information as to the order of maintenance passed in H.M.P. No.397/2019. In such circumstances, the ground mentioned in the application for setting aside the order of interim maintenance passed below Exh.5, dtd.16/09/2023 is not tenable.

07. It is pertinent to note that this Court has no



revisionary powers to set aside or to check the correctness, legality or propriety of the order passed below Exh.5. Furthermore, the power of revision is to be exercised by the Hon'ble High Court or Sessions Court. The Magistrate Court has no power of revision. Therefore, this Court cannot exercise the power conferred on superior Court. Needless to say that, the non-applicants are at liberty to challenge the order passed below Exh.5 before the superior Court. It is pertinent to note that, the application for attachment of salary is rejected by this Court. Therefore, there is no question of keeping the said application in abeyance. However, the applicants can be directed to furnish supplementary affidavit of Asset and Liabilities of the correct information. Hence, considering the above findings, I pass following order;

Order

- 01) The application is rejected.
- 02) The applicants are directed to file supplementary affidavit of Asset and Liabilities showing correct details.

Date : 30/03/2024

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



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PWDVA No.2 of 2022
Nilima & Anr. -Vs-Sachin & Ors.
CNR No.MHCH150001652022

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.