

**IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
15TH COURT, MAZGAON, MUMBAI.**

C. C. No. 11/DV/2023

ORDER BELOW APPLICATION EXHIBITS – 151

1] This application is filed by the respondent for dismissing the application Exh.43 and Exh.62 filed by the petitioner. It is stated that the petitioner has filed two applications Exh.43 for production of documents and Exh.62 for issuing summons to produce documents under section 91 of the Code of Criminal Procedure. The applications are infructuous and required to be dismissed. The Court does not have any jurisdiction to pass orders under section 91 of Code of Criminal Procedure in view of clear and explicit directions set out by the Hon'ble Supreme Court in **Rajnish Vs. Neha**. On failure of filing of affidavit of disclosure, this Court had drawn adverse inference against respondent and passed order on 19.09.2024 on interim application of the petitioner. It is further stated that filing of affidavit of disclosure of Assets and Liabilities as set out in Part – II of the said judgment of the Hon'ble Apex Court pertains to and relates to the stage of payment of interim maintenance only. The interim stage in the instant matter has already passed and the matter is now proceeding towards its final stage which is to decide the permanent alimony. It is stated that under the guidelines and directions of the Hon'ble Apex Court, this Court could have asked for further information at the interim stage if the affidavit of disclosure was filed and further information was required. The affidavit of disclosure has not been filed by the respondent till the date, hence this Court does not have jurisdiction or power to call for further information especially after it has drawn an adverse inference against respondent. The question of grant of

relief under section 91 of Code of Criminal Procedure does not arise since the same is rendered infructuous at this stage. With these submissions, the respondent prayed to allow the application.

2] The petitioner filed her reply at Exh. 156. It is stated that the applications (Exh.43 and 62) were filed to ascertain the income of the respondent to assist the Court to adjudicate and determine the quantum of monetary and compensatory reliefs. The respondent failed to appreciate that applications (Exh.43 and 62) are not filed to decide interim maintenance application, but in aid of deciding the main DV application. The respondent is trying to avoid to produce financial records to the Court. The court has jurisdiction to pass appropriate orders under section 91 of Code of Criminal Procedure as the documents are required for final adjudication of the DV complaint. Hence, she prayed to reject the application by imposing exemplary costs.

3] The Ld. Counsel for the respondent argued that the Court has decided application for interim maintenance and taken adverse inference against respondent for not filing of affidavit of discloser of Assets and Liabilities. Therefore, application Exh. 43 and 62 for production of documents by the respondent have become infructuous and no order can be passed. In support of his arguments, the Ld. Counsel for the respondent relied upon following case laws :-

(A) **Rajnish Vs. Neha and others, 2021 (2) SCC 324,**

(B) **Jeevanjyoti Kaur Bansal Vs. Kulvinder Singh Bansal and others,
2024 BHC AS 13488,**

4] As against it, the Ld. Counsel for petitioner argued that the respondent has not filed his affidavit of disclosure of asset and liabilities. The petitioner has to prove her case for various reliefs and for that purpose, the documents relating to income of the respondent are required to be brought on record and for that purpose, applications need to be allowed.

5] Perused the record. By way of this application, it is prayed by respondent to dismiss applications Exh. 43 and 62 on the ground that they have become infructuous. However, on perusal of record, it can be seen that application Exh. 43 is not pending for order and it has been already decided by way of order dated 14.08.2024 after hearing both sides so no question arise to again consider said application. So far as, application Exh.62 is considered, it was filed by the petitioner on 20.08.2024 at the time when the applications for interim reliefs were to be decided and it was kept pending as trial was not commenced.

6] It is admitted fact that the respondent has not filed his affidavit of disclosure of assets and liabilities and while deciding application for interim maintenance, adverse inference has been drawn against him, but on this ground, it cannot be stated that application Exh. 62 was for deciding interim maintenance application. The petitioner filed application Exh. 62 for issuing summons to the authorities at Serial No. 6.1 to 6.25 of Paragraph No. 6 of the application to file the documents regarding income of the respondent to decide various reliefs claimed by the petitioner. Such kind of prayer cannot be said to be limited to only for deciding interim maintenance and not the reliefs

claimed by way of Exh.1. In view of these circumstances of present case, in my humble and respectful opinion, the case laws cited supra by respondent are not applicable to present case as they are not in respect of production of documents under section 91 of Code of Criminal Procedure. Therefore, it cannot be said that the application Exh. 62 has become infructuous and this Court has no jurisdiction to decide said application. Therefore, application cannot be allowed. Accordingly, I pass following order :-

ORDER

Application (Exh.151) is rejected.

(S. D. Panjwani)

Judicial Magistrate (First Class),
15th Court, Mazgaon, Mumbai.

Date :- 04.06.2025