

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

C. C. No. 11/DV/2023

ORDER BELOW APPLICATION EXHIBITS – 131

1] This application is filed by the respondent to decide application of respondent for setting of amount against the order of interim maintenance at Exh. 126 prior to passing order on application for striking of defence at Exh. 80 and application for issuance of distress warrant at Exh. 123. It is stated that the respondent has challenged the order dtd. 19.09.2024 before Hon'ble Sessions Court vide Appeal No. 618/2024. The petitioner has filed application for striking of defence of respondent and for issuance of distress warrant against respondent at Exh. 80 and Exh. 123. During the period of separation till the date of order, the respondent had spent huge sum of money on the petitioner and their daughter in order to maintain them and he has prayed for set off of said amount by way of application Exh. 126. Said application ought to be decided before passing order on Exh. 80 and Exh. 123. No prejudice will be caused to petitioner if application Exh. 126 is decided prior to Exh. 80 and Exh. 123. Hence, it is prayed to allow the application.

2] The application is opposed by the petitioner by way of her say at Exh. 133. It is stated that there is no provision under the D.V. Act for seeking said relief. The application is filed to delay the proceeding. Application Exh. 80 and Exh. 123 are filed as a consequence for respondent's non compliance directions and orders of the court. Grave harm and prejudice will be caused to petitioner if the application is allowed. Hence, it is prayed to reject the application.

3] Perused the record. Heard, both sides.

.2.

4] Perused applications Exh. 126, Exh. 131, Exh. 80 and Exh. 123 and reply upon them. By way of application Exh. 123, the petitioner is praying for issuing distress warrant against the respondent on the allegations of non-compliance of order passed regarding interim maintenance dtd. 19.09.2024. The application Exh. 126 is filed by respondent subsequently for set off the amount paid by respondent to applicant and daughter after separation till passing of order as per his contention. By way of this application, the respondent prayed to decide application Exh. 126 prior to applications Exh. 80 and Exh. 123. I have perused the reasons described in the application. In view of said reasons, it appears proper that application Exh. 126 should be decided prior to deciding application Exh. 123. However, application Exh. 80 is in respect of striking of defence of the respondent due to non filing affidavit of disclosure of assets and liabilities and it has no connection with prayer of respondent for set off. Therefore, the application is to be partly allowed. In the result, I pass following order:-

ORDER

- 1] Application is partly allowed.
- 2] Application Exh. 126 will be decided prior to application Exh. 123.

(S. D. Panjwani)

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

Date :- 18.12.2024