

Order On Exh. 7 IN Cri. Appeal No.218/2023.

(CNR NO. MHNS010061582023)

Nilesh Purushottam Dahanukar

VS.

Shital Nilesh Dahanukar

Heard the Ld. Advocate for the appellant at length, perused the record.

2. In short according to him, the Ld. Trial Court earlier directed the appellant to pay maintenance of Rs.20,000/- per month to his daughter when she was residing with his wife i.e. the respondent. Subsequently, by virtue of the order dated 21/12/2022 passed by the Family Court he was granted the custody of his daughter and since then she is living with the appellant. Consequent, to these developments through the application Exh. 39 he prayed for modification of the order whereby he was directed to pay the maintenance. Similarly, through the application Exh. 35 the applicant therein also sought similar relief but through impugned order the Ld. Trial Court has rejected the applications. Resultantly, a distress warrant will be issued against him for the amount which is not due and payable. The Ld. Adv. further submits that the Ld. Trial Court has failed to appreciate material change in circumstances therefore, the order needs to be stayed.

3. The record reveals that earlier the appellant was directed to pay maintenance of Rs.20,000/- per month to his daughter, but later on by virtue of an interim relief granted by the Family Court in D.P No. 10/2021 dated 21/12/2022 he has obtained the custody of his daughter. Apparently, the maintenance of Rs. 20,000/- was directed to be paid to the respondent as a guardian of their daughter. The change in the custody of the minor has materially changed the

circumstances that led to grant of maintenance. It appears that the Ld. Trial Court in the impugned order opined that the Family Court is a separate and independent authority having its own way of working therefore, the orders passed by Courts can not have direct influence on the matter present before it. Pertinently, the change in custody of the daughter of appellant by virtue of the order of Family Court has materially changed circumstances that led to grant of maintenance of Rs.20,000/- per month. Apparently, the Ld. Trial Court has overlooked this aspect and passed impugned order.

4. From the arguments put forth by the Ld. Adv. for the appellant it appears that a distress warrant will be issued for recovery of this maintenance amount against the appellant.

5. Therefore, in afore stated circumstances impugned order needs to be partially stayed. Hence, the order :

ORDER

1. Impugned order on Exh. 39 dated 01/09/2023 in P.W.D.VA. No. 577/2021 is partially stayed to the extent of relief of modification of maintenance amount.
2. The respondent is at liberty to take necessary steps for recovery of arrears, if any, of the maintenance amount up to December 2022.
2. Issue notice to the respondent.
3. Inform the Ld. Trial Court.

Nashik
16/10/2023

J. M. Dalvi
District Judge-7, Nashik.