



**ORDER BELOW EXH.47  
(Passed on 18.07.2024)**

The present application is moved by the respondent for recalling the order below Exh.37.

02. The learned advocate for the applicant objected for the same and submitted that this court has no powers to recall his own order and the respondent shall approach before appropriate court.

03. On perusal of record it is seen that, the original application is for recovery amount of Rs.60,000/- pursuant to the Final Judgment under Domestic Violence application filed by the applicant.

04. In the said application the learned advocate for the applicant moved an application for return of Stridhan which according to him has been in the custody of the Respondent. Despite being given sufficient opportunity, the Respondent has failed to file the say. Furthermore this court, under the impression that the case filed by the applicant is Protection of Woman from Domestic Violence Act, inadvertently passed an order for the return of Stridhan to the applicant relying on the submissions of the applicant's advocate.

05. After appearance of the learned advocate for the respondent this court has get knowledge that the main application is filed for recovery of amount of Rs.60,000/- and the application filed by the applicant for return of Stridhan in the present proceedings is abuse of process of law.

06. This court is agreed with the submissions of the learned advocate for the respondent as the application is not tenable and therefore inadvertently the order has been passed by this court and if the same is not recalled it would be abuse of process of law moreover it is the

procedural defect and it will cause grave injustice to other side. Further more the order is passed without hearing the opposite side.

07. The nature of Protection of Woman from Domestic Violence Act and trial conducted under the act are quasi Civil in nature and therefore under Section 151 of Code of Civil Procedure this court has power to recall his own order passed on misleading application inadvertently and if the same is kept as it is it would be abuse of process of law. Further the exercise of the power is necessary for ends of justice and to prevent abuse of process of law. The learned advocate for the applicant argued that there is limitation for review. Therefore the application is not within limitation. It is pertinent to note that there is difference between review and recall. For review there is specific provision in the code of civil procedure. However for recall the order the Court has to use their inherent powers conferred under CPC.

08. In the case of Manohar Lal vs Seth Hiralal ,it was observed by the Hon'ble Court that "The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it."

09. Here the court is not deciding whether the order passed by this court is legal or illegal. The query is that the application filed by the applicant is not according to the procedure therefore it is necessary for this court to correct the defect which was happens in the procedure. Therefore the return of Stridhan order passed by this court is hereby recalled as the application filed by the applicant is not maintainable in the proceedings which is filled for recovery of money. In the present

proceeding if the application has been kept as it is it would lead to be a procedural defect and injustice with the respondent. Hence I pass following order:

**ORDER**

1. The application is allowed.
2. The order below Exh.37 is recalled.

Date: 18.07.2024

Place: Roha.

(M.C.Hasge)  
Judicial Magistrate First Class,  
Roha, Dist. Raigad.