

ORDER BELOW EXH. 24 IN RCS NO. 39/2017
(Passed on 15.07.2023)

1. This application has been filed by the defendant under section 151 of the Code of Civil Procedure (for brevity "CPC") seeking interim maintenance/alimony pendent-lite from the plaintiff to the tune of Rs.20,000/- per month.

2. Learned advocate for the defendant has submitted that the defendant is paradanashin Muslim lady having no source of income. She is a mother of one child aged 2 ½ years. Therefore, in absence of any livelihood she is facing hardship to bring up her child. Therefore, she requires interim maintenance during the pendency of the instant suit. It is further submitted that at present, defendant resides at Kamargaon which is 25 km away from Karanja. However, she must bear the expenses towards the traveling as well as towards fees of her lawyer. So also, in order to fulfill daily needs of her child and her, she requires interim maintenance from the plaintiff as stated above.

3. It is further submitted that non-applicant being a teacher in Zilla Parishad School, at Mandavali, Tq. Dapoli, Dist. Ratnagiri and having salary of Rs.42,000/- to Rs.45,000/- per month. He is being a husband and father is duty bound to maintain the defendant and her child. Hence, present application.

4. Learned advocate for the defendant has placed his reliance upon the judgment passed by **Hon'ble Bombay High Court in Mohammed Anis-Ul-Haq Vs. Asma Anjum 2011(1)ALL MR 226**, to contend that though the parties are Muslim, however the defendant is entitled for interim maintenance during the pendency of restitution proceeding as held by the Hon'ble Bombay High Court in the said judgment.

5. On the other hand, the application came to be strongly opposed by the plaintiff by filing say on the back side of the application. Wherein, it is

contended that there is no provision under Mohammedan Law for the grant of interim maintenance in the suit of restitution of conjugal rights. As such, the plaintiff has filed suit for restitution of conjugal rights against defendant who is legally wedded wife of the plaintiff. Therefore, the very application is not maintainable in the said proceeding.

6. It is further contended that the defendant has filed an application under provisions of Protection of Women from Domestic Violence Act, 2005 (for brevity "D.V. Act") as D.V. Application No.39/2017. So also, under section 125 of Cr.P.C. bearing M.C.A. No. 196/2017 in the Court of Karanja. And, in both proceedings she has been awarded an interim maintenance to the tune of Rs.2500/- per month. Therefore, it is submitted that this is the third application moved by the defendant for interim maintenance which is not maintainable. It is also submitted that the plaintiff is regular in the payment of interim maintenance awarded in the above-mentioned proceedings. And, he has not made single breach of order of interim maintenance in either of the proceedings. Thus, eventually prayed to reject the present application.

7. Heard both sides. Perused the application, say and gone through the above-mentioned case laws cited by the defendant.

8. Record reveals that the plaintiff being husband of defendant has filed instant suit for restitution of conjugal rights under section 9 of CPC read with Article 281 of Principles of Mohammedan Law by Mulla. It is further seen that the plaintiff has adduced his evidence below Exh.18 and examined himself in the court on 06/01/2020. However, the matter appears to have been adjourned for the cross-examination of the plaintiff in view of the oral request made by the learned advocate for the defendant. It appears that till date the plaintiff has not been cross-examined by the defendant. On the other hand, the instant application came to be filed by the defendant on 12/03/2020.

9. Now coming to the merits of instant application, the defendant is claiming Rs.20,000/- per month towards interim maintenance/alimony pendente lite from the plaintiff as mentioned above. However, the same has been resisted by the plaintiff on the count that the present application itself is not maintainable. As such, there is no provision under Mohammedan Law providing interim maintenance during the pendency of the suit of restitution of conjugal rights in view of the Article 281 of Mulla's Commentary on Mohammedan Law. It is to be noted that the defendant has admitted that she has been receiving the amount of interim maintenance as awarded in the above mentioned two proceedings. However, she still requires the interim maintenance due to insufficient amount of interim maintenance awarded in the above mentioned proceedings.

10. So far as the maintainability of this petition is concern, then I have carefully gone through the citation **Mohammed Anis-Ul-Haq (supra)**. Hon'ble Bombay High Court has laid down the ratio in the said judgment as under, "Family Court shall have jurisdiction to grant interim maintenance has same power of Code of Civil Procedure is available to Family Court."

11. The contents of the said judgment would further reveals that in the said case law the facts were similar as to the present case. As such, in the said judgment a suit was filed for restitution of conjugal rights in the Family Court by Muslim parties, wherein an amount of Rs. 2500/- per month was awarded to the wife towards interim maintenance. The said order was challenged before the Hon'ble Bombay High Court. By upholding the said order Hon'ble Bombay High Court has held that in a suit cognizable under section 9 of the Code of Civil Procedure, 1908, the power to grant interim maintenance available to the Civil Court and same power was also available to the family court. The above judgment is squarely applicable to the case in hand. As such, in the said judgment parties were Muslim and suit was filed for the same relief. And the

Hon'ble Bombay High Court was pleased to uphold the order of interim maintenance to the wife.

12. Thus, in view of the above judgment, there remains no iota of doubt regarding the maintainability of the instant application. Now, the only thing which is required to be considered is the quantum of maintenance to be awarded to the defendant. The defendant has pleaded that the plaintiff is a School teacher in Zilla Parishad School and earns Rs.42,000/- to Rs.45,000/- salary per month. Therefore, he is liable to pay the interim maintenance as prayed. This fact is not denied by the plaintiff in his plaint or reply. However, on the same time, it is to be borne in my mind that plaintiff is paying the interim maintenance awarded in the above mentioned two separate proceedings to the defendant to the tune of Rs. 2500/- per month. Therefore, considering this fact, in my considered view the amount claimed in the present application cannot be awarded as an interim maintenance to the defendant. However, considering the ongoing litigation and expenditure thereof by both parties and also considering the fact that this matter being old and defendant has been residing separately from the plaintiff for about 5 years without any source of income and on the mercy of her parents. In my considered view, the amount of Rs.5000/- towards the interim maintenance would be suffice. Hence, I proceed to pass the following order.

ORDER

1. Application (Exh.24) is partly allowed.
2. Plaintiff is directed to pay Rs.5,000/- (Rupees Five Thousand only) per month to the defendant towards interim maintenance/alimony pendent-lite from the date of filing of the application.
3. No order as to costs.

Date: 15/07/2023.

(M.H. Haque)
Jt. Civil Judge (Jr. Dn.),
Karanja (Lad)