

COMMON ORDER BELOW EXH- 33 & 40

1] Application Exh.33 is filed by the applicants for recovery of maintenance arrears of Rs.1,16,500/- for the period from 16-09-2017 to 25-07-2023 and application Exh.40 is filed by the applicants for issuance of warrant of Rs.1,07,000/- against non-applicant.

2] Non-applicant strongly opposed both the present application on ground that, both applications are filed after the period of 6 years from the order of maintenance. It is stated that, as per the provision of Cr.P.C it is mandatory to file recovery of maintenance arrears application within the period of 11 months when it becomes due. Hence, non-applicant prayed to reject both the applications.

3] Perused the both the applications and say of non-applicant. Perused the record of the case. Heard both sides.

4] It is not in dispute that, the main application dt.16-09-2017 has been filed by the applicants for recovery of maintenance arrears of Rs.35,500/- as per the order dt.19-05-2017 passed in Cri.Appl.No.11/2016. It is not in dispute that, Cri.M.A.No.11/2016 was filed by the applicants for maintenance against non-applicant. That application was decided on 19-05-2017 wherein it was directed to non-applicant to pay maintenance of Rs.2,000/- per month to all applicants alongwith cost of that application of Rs.1,500/-. It is to be noted that, it is undisputed that, as per order

passed in Cri.M.A.No.11/2016 the applicants filed main application on 16-09-2017 for recovery of maintenance arrears of Rs.35,500/-. It is also undisputed that, that applications dt.19-09-2017 is filed within one year from the date of order passed in Cri.M.A.No.11/2016.

5] It seems from the record that, during the pendancy of main application dt.16-09-2017 the applicants have filed the present application on 25-07-2023 praying for recovery of maintenance arrears of Rs.1,16,500/- for the period from 16-09-2017 to 25-07-2023.

6] The present application dt.25-07-2023 (Exh.33) is opposed by the non-applicant on the ground that, the said application is filed beyond limitation as per the provision of Criminal Procedure Code.

7] It is undisputed that, when present application Exh.33 was filed at that time the full amount of maintenance arrears (i.e. Rs.35,500/- as per main application dt.16-09-2017) was not paid on behalf of the non-applicant. It means application Exh.33 is made for recovery of maintenance arrears of Rs.1,16,500/- (for the period from 16-09-2017 to 25-07-2023) in continuation of main application dt.16-09-2017.

8] The judgment of Hon'ble Bombay High Court in the case of Swati Suresh Ubale -Vs- Suresh Laxman Ubale, 1996 (2) Crimes 479 Bombay in Cri.Appl.No.112/95 decided on 04-09-1995 is relevant to the present fact of the case. In case of Swati Suresh Ubale the Hon'ble Bombay High Court held that "*The first proviso to*

sub-section (3) of section 125, however carves out an exception that no warrant shall be issued for levy of any amount due under this sub-section unless an application is made to the Court to levy such amount within a period of one year from the date on which it became due. Obviously what is meant by this proviso is that if the payment of maintenance has become due then within a period of one year there from an application has to be made for issuance of warrant for levy of the due amount but once the application is made for recovery of maintenance amount which has become due, if during the pendency of such application, further amount becomes due, the said proviso does not bar issuance of warrant for such amount. The wife or such person should not be compelled to move fresh application for future amount which had become due during the pendency of the application already filed for recovery of arrears of maintenance. The first proviso to section 125 (3) of the Code of Criminal Procedure cannot be construed too technically and narrowly which would frustrate and defeat the very objective for which the said provision has been enacted. It is the fundamental principal of law that multiplicity of proceedings should be avoided as far as possible, and practicable and if the aggrieved wife, children or parents, as the case may be, has made an application for recovery of arrears of maintenance and during the pendency of such application, the maintenance has fallen due for the period post application, pending adjudication before the Court, there cannot be and should not be any need for filing fresh application for recovery of maintenance which had become due during the pendency of the application. Multiplicity of applications for recovery of

maintenance which had become due during the pendency of the application under section 125 (3), Criminal Procedure Code already filed is neither in the interest of justice nor the requirement of law and, therefore, insistence for making fresh application for recovery of arrears of maintenance during the pendency of the application already filed would be unjustified and would rather lead to abuse of the process of the Court. There is justification in the observations made by the M. P. High Court in Loonchands case (supra) that when the wife makes an application to secure an order that the husband should pay maintenance regularly, then the first proviso to section 125 (3) of the Code of Criminal Procedure is satisfied and there is no need to multiply the applications by filing them every year, and I am in agreement with the said view of the M. P. High Court. It is always open to the Court seized of an application for recovery of arrears of maintenance to pass an order directing the husband to make the payment of arrears of maintenance upto the decision since such power is implicit in exercise of jurisdiction of the Court while disposing of the application for recovery of arrears of maintenance. The first proviso to section 125 (3) of the Code of Criminal Procedure cannot be overstretched that for arrears of maintenance which fallen due d ling the pendency of application for recovery of maintenance, the aggrieved person should make an application again within a period of one year from the date on which it became due."

9] On careful perusal of said order of Hon'ble Bombay High Court it would clear that, once the application for recovery of maintenance is filed within the period of one year when it becomes

due, then there is no bar to recover further amount which becomes due during the pendency of said application. From the said judgment it would also clear that, there is no need to move fresh application for future amount which had becomes due during the pendency of application already filed for recovery of arrears of maintenance.

10] As stated above the main application dt.16-09-2017 was filed for recovery of maintenance arrears within the period of one year from the order dt.19-05-2017 passed in Cri.M.A.No.11/2016. Further, the present application Exh.33 has been filed in continuation of main application dt.16-09-2017. In such circumstances and considering the observation of Hon'ble Bombay High Court in above cited case I am of the view that, the present application Exh.33 is entitled to be allowed.

11] It seems from record that, when the application Exh.33 was filed at that time the arrears of maintenance of Rs.1,16,000/- for the period from 16-09-2017 to 25-07-2023 was due. But it appears that, after that application non-applicant has paid total amount of Rs.9,500/- toward maintenance. It means the non-applicant is in arrear of Rs.1,07,000/- for the period from 16-09-2017 to 25-07-2023. Therefore, applicant is entitled to recover amount of maintenance of Rs.1,07,000/- as mentioned above.

12] It appears that, the application Exh.40 is filed by the applicants for issuance of warrant of Rs.1,07,000/- against non-applicant. But considering the facts of the case it would be just to direct non-applicant to pay the amount of Rs.1,07,000/- (for the

period from 16-09-2017 to 25-07-2023) within the period of one month. Hence, following order.

ORDER

- i] Application Exh.33 is allowed.
- ii] Non-applicant is directed to pay maintenance amount of Rs.1,07,000/- (for the period from 16-09-2017 to 25-07-2023) within the period of one month from today. With this direction the application at Exh.40 is filed.
- iii] If non-applicant failed to pay amount of Rs.1,07,000/- as directed then applicants have liberty to take steps as per law against non-applicant for recovery of that amount.

Date- 12/01/2024

Sd/-
(D.R. Kulkarni)
Judicial Magistrate F.C.,
(Court no.2), Ralegaon
