

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5526 OF 2023

Rohan Rajiv Kadam & Ors.

.... Petitioners

versus

Sandhya Vijay Kadam & Ors.

.... Respondents

.....

- Mr. Bhushan Raut, Advocate for Petitioner.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th APRIL 2023

P.C. :

1. Leave to amend. Amendment to be carried out to add prayer for ad-interim relief. The amendment shall be carried out forthwith.
2. Heard Mr.Bhushan Raut, learned counsel for the Petitioners.
3. The Petitioners have challenged the order dated 22/02/2022 passed by the 3rd Additional Judge, Small Causes

Court & CSJD, Pune, below Ex.1, in Regular Darkhast No.3/2017. By the impugned order, the learned Judge has directed that the decree holder i.e. the Respondent No.1 can seek enforcement of interim maintenance order from December 2004 i.e. amount of Rs.14,80,000/- for 148 months only. The Petitioners were the original contesting Defendants and their legal representatives. The suit was filed by the Respondent No.1 bearing Special Civil Suit No.1873 of 1998 before the Civil Judge, Senior Division, Pune, for partition of the joint property and for declaration of a share. She has also prayed for mesne profit. During pendency of the suit she was granted maintenance of Rs.10,000/- per month. The suit was finally decreed vide order dated 28/04/2017.

4. The Respondent No.1 filed an application vide Regular Darkhast No.3/2017 for recovery of the maintenance amount in which the impugned order was passed.
5. Learned counsel invited my attention to the

compromise pursis filed during pendency of the suit on 30/04/2001. In that pursis it was clearly mentioned that the Plaintiff/Respondent No.1 herein has received Rs.19 lakhs and it was in satisfaction of not only the maintenance but in satisfaction of her entire claim. There was nothing further remaining and that the parties were withdrawing the suit and other allegations made against each other.

6. Learned counsel for the Petitioners submitted that after this compromise, within a short period the Respondent No.1 denied bonafide execution of the said pursis. However, the Trial Judge vide order dated 13/03/2003 passed below Ex.97 had accepted that the pursis was given and that the money was received by the Plaintiff and therefore the Plaintiff's application for grant of further payment and the maintenance was rejected. According to learned counsel, therefore, it was not open for the Plaintiff to have claimed any amount other than what was received by her earlier in satisfaction of her claims. The learned Judge erred in observing while passing impugned order that no

evidence was put forth by the judgment debtors to show that they have paid the amount as per the order of the Court. Learned Trial Judge observed that all the objections raised by the judgment debtors pertaining to the alleged compromise and payment of amount has been already adjudicated by the Court. Learned counsel submitted that the operative part of the decree does not make any reference to the interim maintenance.

7. Considering these submissions, it is necessary to hear the Respondent No.1 in particular. Learned counsel for Petitioner has made out a case for grant of ad-interim relief.

8. Hence, the following order :

ORDER

- (i) Issue notice to the Respondents returnable on 24/08/2023.
- (ii) Stand over to 24/08/2023.

- (iii) Till then, there shall be ad-interim relief in terms of prayer clause (c).

(SARANG V. KOTWAL, J.)