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Court : Mumbai Aurangabad

Decided On : Nov-27-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Writ Petition No. 862 of 2014

Appellant : Niranjan

Respondent : Priti

Judgement :

P.C.

1. The petition is filed to challenge the order made by learned J.M.F.C. on Exhibit-57. The application was filed by present petitioner, husband, for giving permission to examine some witnesses and the same is rejected by the learned J.M.F.C. The proceeding is filed under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the Act). Both the sides are heard.

2. In the proceeding, filed under section 12 of the Act, the wife, respondent has claimed the reliefs like compensation/ damages of Rs.5 Lakhs, make arrangement of separate residence at Aurangabad or to pay rent for the same, not to commit domestic violence against her, pay to her monthly maintenance of Rs.25,000/- etc. The application was filed on 29th June, 2012 and till today that application is pending.

3. The husband appeared in the aforesaid proceeding on 3rd September, 2012 and the say came to be filed on 20th September, 2012. Interim maintenance of Rs.5,000/- per month was granted from the date of the application till the final disposal of the matter by the Court, by order dated 10th January, 2013. The husband did not make any payment as per this order and he challenged the said order by filing revision. The proceeding of revision was filed with application for condonation of delay. In revision, interim stay is given by Sessions Court and the husband is directed to deposit Rs.2,500/- per month as maintenance. It is the grievance of the wife that instead of depositing the amount in revision, the interim amount and the amount of some part of arrears came to be deposited in delay condonation application which was disposed of and this trick was played by the husband to see that the wife does not easily get any amount from him. Statement was made by the learned counsel for the wife, in this proceeding, that till today the wife did not receive a single pie from that amount.

4. In the main matter, proceeding filed under section 12 of the Act, examination in chief, by way of affidavit was filed by the wife on 31st January, 2013. As per the contentions of wife, the husband did not take steps for cross examination and ultimately on 12th June, 2013 order of "no cross" was made by learned J.M.F.C. The husband then changed the Advocate and the new Advocate applied for setting aside the order of "no cross". Subject to some costs, this application was allowed on 14th August, 2013 but immediate steps were not taken for cross examination. The wife was required to move an application before learned J.M.F.C. for taking up the matter on day to day basis. The counsel appointed by the husband commenced cross examination and ultimately on 24th September, 2013 when the cross examination was over, the wife closed her evidence. The wife examined herself, and no other witness is examined.

5. From 24th September, 2013 the husband did not take steps to lead evidence and then on 11th December, 2013 he filed examination in chief by way of affidavit. He was cross examined on 15th January, 2014. After that, he did not take steps to bring his witnesses or to take witness summons and ultimately he moved an application at Exhibit-47 for issuing summons to certain witnesses but the application came to be rejected on 10th March, 2014.

6. The husband wanted to examine one Shri Jain who had acted as mediator in the marriage, one tour operator of the tourist company with which this couple had gone to various stations on Honeymoon tour and a witness to prove list of gift articles. The wife has claimed for return of the gift articles also but she has not examined any witness to prove this contention.

7. When the J.M.F.C. rejected the application at Exhibit-47, this order was challenged by filing Writ Petition No.426 of 2014. This Court allowed the petition by order dated 25th April, 2014. A direction was given to husband to see that two witnesses, like witness mediator and witness on list of articles are kept present by the husband himself and he was allowed to take witness summons as against the third witness. The learned counsel for the Applicant submitted that the husband waited for getting certified copy and so he did not appear before the J.M.F.C. immediately after decision of writ petition No.426 of 2014. Learned counsel for the husband further submitted that his Advocate met with an accident and so he did not appear before the J.M.F.C. for some time. It appears that Internet copy of the aforesaid order made by this Court in writ petition No.426 of 2014, was submitted before the learned J.M.F.C. by the counsel for wife on 15th May, 2014. The wife then applied for closing evidence of the husband as the husband was not showing interest in leading evidence. In view of the application filed by the wife, the J.M.F.C. made order and fixed the matter for final argument. On 24th June, 2014 both the parties and their counsel were present and so the date was fixed for final argument as 26th June, 2014. It is contended by the wife that her Advocate advanced the arguments and then the matter was adjourned to 30th June, 2014.

8. On 30th June, 2014 the husband filed application at Exhibit-57 before J.M.F.C. and he again contended that he needs to be allowed to examine the witness and he was ready with one witness for examination in the Court. Then the matter was adjourned to 7th July, 2014 and to 18th July, 2014. On 18th July, 2014 Exhibit-57 application came to be rejected. The learned J.M.F.C. has observed that the husband has not shown interest in leading evidence and the steps taken by the husband are not in conformity with the directions given by the High Court in the aforesaid writ petition.

9. This Court had given an opportunity to the husband to examine the witnesses but the aforesaid circumstances show that he was more interested in protracting the matter than examining the witnesses. In his favour, there is interim order in the revision and due to that he is not required to pay interim maintenance as directed by the J.M.F.C. and stay is there subject to deposit of Rs.2,500/- per month. It is the case of the wife that the monthly income of the husband is more than Rs.70,000/- and till today she has not received a single pie due to the tactics played by the husband. In view of these circumstances, this Court tried to ascertain the bonafides of the husband. The learned counsel appointed by the husband was asked to make a statement as to whether the husband is ready to deposit at-least some amount to see that the wife get something for her maintenance. The husband is Bachelor of Engineering and for many years he has been working in Bajaj Alliance Company. As per the interim maintenance granted by the learned J.M.F.C. the arrears amount could have been more than Rs.1.7 Lakhs. This Court asked as to whether the husband is ready to deposit Rs.75,000/- to show his bonafides. It was made clear that the previous amount deposited like Rs.50,000/- towards arrears of maintenance and the interim maintenance fixed by Sessions Court at the rate of Rs.2,500/- per month will be taken into consideration and this Court is of the opinion that the husband needs to be made to pay at-least Rs.1.25 Lakhs as part payment of the total amount of arrears. This Court also expressed that some time can be given to the husband to make payment of this amount which may be even less Rs.75,000/-. The learned counsel appointed by the husband submitted that the husband is not ready to make such payment and as the husband has got the order of interim maintenance in Sessions Court and it will be up to the Sessions Court to decide as to what amount needs to be given by the husband as interim maintenance.

10. The provision of Section 12(5) of the Act shows that such proceeding is expected to be decided within a period of 60 days from the date of its first hearing. The aforesaid circumstances show that husband acted mischievously and he took all possible steps to see that the hearing is protracted and the wife does not get anything. Writ jurisdiction cannot be exercised for such person. This Court holds that though in the past some order was made, the husband failed to use that order and his action was not bonafide. This Court holds that no relief can be given to the

husband in this proceeding and it needs to be left with the J.M.F.C. to decide the matter as early as possible.

11. In view of the submissions made for the wife that due to some technical difficulty the wife is not getting the amount deposited in the Court, this Court is making it clear that the arrears need to be paid to the wife. The Sessions Court/ District Judge needs to see that the amount deposited as interim maintenance is given to the wife.

12. In the result, for aforesaid reasons, the petition stands dismissed.

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