

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2981 OF 2024

Supriya Sunil Zambare

...Petitioner

Versus

Sunil Uttam Zambare

...Respondent

Ms. Rati S. Sinhasane, for the Petitioner.

Mr. Sarthak Diwan i/b Panchshil V. Patil, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 25 MARCH 2025

JUDGMENT:

1. Heard Ms. Rati Sinhasane, learned Counsel appearing for the Petitioner and Mr. Sarthak Diwan, learned Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 11th January 2024 passed by the learned 6th Joint Civil Judge Senior Division, Sangli below Exhibit-79 in Hindu Marriage Petition No.166 of 2019. The said Application bearing Exhibit-79 has been filed by the present Petitioner seeking to strike out the defence of the Respondent under the provisions of Order XXXIX Rule 11 (Bombay Amendment) of the *Code of Civil Procedure, 1908* (“CPC”).

3. The learned trial Court has rejected the said Application on the ground that the Petitioner is not entitled for Rs.1,000/- per month in addition to the maintenance of Rs.1,500/- per month.

4. Perusal of the record shows that the learned 3rd Joint Civil Judge Senior Division, Sangli by Order dated 12th March 2020 passed below Exhibit-21 in Hindu Marriage Petition No.166 of 2019 has directed that the Petitioner in said Hindu Marriage Petition i.e. Respondent in Writ Petition - husband shall pay Rs.1,500/- per month to the Petitioner in Writ Petition - wife as maintenance pendente lite from the date of the Application i.e. from 6th February 2020 till final disposal of main Petition and Rs.1,000/- as expenses of proceeding.

5. In the said Application bearing Exhibit-79 filed under Order 39 Rule 11 of CPC the present Petitioner i.e. wife has in effect raised the contention that the maintenance of Rs.1,500/- per month and an additional amount of Rs.1,000/- per month has been granted by said Order dated 12th March 2020. Thus, it is tried to be contended that total maintenance granted is Rs.2,500/- and by taking said contention the arrears of maintenance are calculated. The learned trial Court has dismissed the said Application bearing Exhibit-79 on the ground that maintenance granted is only Rs.1,500/- per month and not Rs.2,500/- per month as contended by the Petitioner.

6. However, it is an admitted position that even if the arrears are

calculated at the rate of Rs.1,500/- per month then also the arrears till March 2025 are Rs.25,000/-. Even when the impugned Order has been passed at that time also there were arrears, even if the arrears would have been calculated at the rate of Rs.1,500/- per month. Thus, the impugned Order dated 11th January 2024 of the learned Joint Civil Judge Senior Division, Sangli below Exhibit-79 in Hindu Marriage Petition No.166 of 2019 is passed without considering the said aspect and thus perverse.

7. For considering the relief to which the Petitioner is entitled, it is necessary to set out the relief which is sought by the Petitioner in the said Application bearing Exhibit-79 filed in Hindu Marriage Petition No.166 of 2019, which reads as under :-

“तरी प्रस्तुत मुळ अर्जदार यांनी थकीत रक्कम रु. ५२,५००/- जोपर्यंत जाबदार यांना देत नाहीत तोपर्यंत अर्जदार यांना जाबदार हिचा उलट तपास व बचाव घेणेचा अधिकार राहत नाही. तरी कायद्यातील तरतुदी प्रमाणे मूळ अर्जदार यांचा बचाव रद्द डिफेन्स स्ट्राईक आऊट करणेत यावा. अर्जदार यांच्या मूळ अर्जास स्थगिती देणेत यावी व उलट तपास घेण्यास अर्जदार यास परवानगी देणेत येवु नये, ही विनंती.”

(Emphasis added)

Thus, the Petitioner has *inter alia* sought the prayer to strike out the defence of the Respondent i.e. of the Petitioner in said Hindu Marriage Petition.

8. In view of the prayer which is sought by the Petitioner in said Application bearing Exhibit-79, it is necessary to set out Order XXXIX Rule 11 (Bombay Amendment) of CPC, which reads as under :-

“11. Procedure on parties defying orders of Court, and

*committing breach of undertaking to the Court.-(1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the **Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.***

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court:

Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed.”-(1-10-1983).”

(Emphasis added)

9. Admittedly, the said Hindu Marriage Petition No.166 of 2019 has been filed seeking divorce under Section 13(1)(i-a)(b) of the *Hindu Marriage Act, 1955* by the Respondent - Husband. Thus, in fact if the Respondent has violated the order passed by the learned Trial Court granting maintenance then the said Hindu Marriage Petition No.166 of 2019 is liable to be dismissed. The prayer sought by the Petitioner in said Application bearing Exhibit-79 in Hindu Marriage Petition No.166 of 2019 regarding striking out of the defence of the Respondent is required to be understood in the context of Order XXXIX Rule 11

(Bombay Amendment) of CPC which provides that if the breach is committed by the Plaintiff or the Applicant, the Court has power to dismiss the suit or proceeding. Although, in the said Application bearing Exhibit - 79 relief sought is to strike out the defence of the Respondent, the said prayer is required to be appreciated in the above context. It is settled legal position that the Court's power to "mould the relief" stems from its inherent power to do justice and to prevent abuse of the process, as enshrined in Section 151 of CPC. The Court can mould the relief to do substantial justice. It is settled legal position that justice cannot be forsaken on the alter of technicalities. Thus, in view of the above position of law although the prayer is not sought of dismissal of the said Hindu Marriage Petition, there is no impediment in granting said relief as admittedly the Order granting maintenance is breached.

10. Accordingly, the impugned Order dated 11th January 2024 passed by the learned 6th Joint Civil Judge Senior Division, Sangli below Exhibit-79 in Hindu Marriage Petition No.166 of 2019 is quashed and set aside and the said Application bearing Exhibit-79 filed in Hindu Marriage Petition No.166 of 2019 is allowed. Thus, it is directed that if the said amount of arrears of Rs.25,000/- is not deposited before the learned trial Court on or before 30th June 2025, then in that case said Hindu Marriage Petition No.166 of 2019 shall stand dismissed. If such amount is deposited on or before 30th June 2025 then the said Hindu

Marriage Petition No.166 of 2019 be proceeded further and disposed of on merits in accordance with law. For ensuring compliance of this direction, the further proceedings in said Hindu Marriage Petition No.166 of 2019 shall remain stayed till 30th June 2025.

11. If the said amount of Rs.25,000/- is deposited by the Respondent then the Petitioner is permitted to withdraw the same.

12. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]