

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

**REVIEW PETITION NO.8 OF 2014
IN
FAMILY COURT APPEAL NO.193 OF 2013**

Pradeep T. Datwani .. Petitioner.
Vs.
Mansi D. Datwani .. Respondent.

Mrs.Taubon F. Irani for the Petitioner.
Mr.R. T. Lalwani i/b Prakash Mahadik for the Respondent.

**CORAM : V. K. TAHILRAMANI &
A. K. MENON, JJ.**

RESERVED ON : 18TH DECEMBER, 2014

PRONOUNCED ON : 24TH DECEMBER, 2014

ORAL ORDER (PER A.K. MENON, J.)

1. By this Review Petition, the Petitioner, who was Appellant in the Family Court Appeal No.193 of 2013 and 194 of 2013 seeks review of the judgment dated 21st February, 2014 passed by this Court to which one of us (Smt.V.K. Tahilramani, J.) was a party. By the said judgment dated 21st February, 2014 this Court allowed the Family Court Appeal and set aside the impugned judgment dated 19th March, 2008 and restored petition to the file of the Principal Judge, Family Court, Bandra for

hearing and its disposal in accordance with law on merits.

2. The case of the Petitioner/Appellant was that the orders passed by the Family Court were exparte. According to the Petitioner on 18th March, 2008 he was not attending the Court being unaware of the adjourned dates and since his Advocate did not inform him that he would be required to attend the Court. On the other hand it was contention of the Petitioner/Appellant that he used to appear in the Court from 16th November, 2006 to August 2007 and thereafter his Advocate has told him that the matter was kept for settlement and therefore presence of the Petitioner would not be required. His Advocate was to attend the same and keep him posted. In this manner the Petitioner/Appellant did not remain present and as a result of which on 19th March, 2008 the exparte order came to be passed. He was unaware of this order. The Petitioner/Appellant filed an appeal seeking setting aside of the exparte order dated 19th March, 2008, however, Miscellaneous Application No.106 of 2008 and 110 of 2008 came to be rejected by the Principal Judge of the Family Court dated 26th August, 2013.

3. The short point canvassed is that the interim order

that is passed, namely, the order dated 19th March, 2008 would not revive, if the final order was set aside. It is the Respondent's submission that when the final order was set aside the interim order directing payment of maintenance would revive. The counsel for the Petitioner/Appellant submitted that the parties are relegated to stage at which they were earlier.

4. Learned counsel for the Petitioner has relied upon the judgments of the Madras High Court (Madurai Bench) in ***K. Kalyanasundaram and K. Sadachi Vs. P. Kaliswari* 2010 (1) L.W. 463** which in turn relies upon the judgment in ***Vareed Jacob Vs. Sosamma Geevarghese and Others* AIR 2004 SC 3992, *M. Ravindran Vs. Ramchandran* 2013 (4) CTC 7, *Aziz Ahmed Khan Vs. I. A. Patel* AIR 1974 A.P. 1 and *Jaipur Municipal Corporation Vs. C. L. Mishra* 2006 (1) UJ (SC) 23. The law laid down by the Apex Court is clear and we refrain from expressing any opinion qua the facts of this case.**

5. In this case the Petitioner/Appellant was absent after 27th August, 2007. The interim order was passed on 19th March, 2008, therefore, according to the Petitioner/Appellant the interim order cannot revive since the final order itself was set aside by this Court. He seeks review of this Court's order dated

21st February, 2014 by this review petition.

6. The submissions of the Petitioner are not well founded. In fact they are entirely misconceived. The Petitioner is presently aggrieved by the order dated 16th August, 2014 passed by the Family Court after the matter was remanded. By this order the Petitioner was directed to deposit arrears of maintenance computed in accordance with the interim order; amounting to Rs.4,65,000/- before 1.9.2014. After this order was passed the Petitioner/Appellant moved a praecipe before this Court seeking clarification to the effect that the impugned order would not revive and sought addition of the following sentence :

“Since the ex parte order and decree of 19th March 2008 is set aside, all proceedings in the said petitions from the stage of the husband's non appearance i.e. from August 2007 are set aside to ensure no prejudice is caused to the husband.”

7. An order dated 25th August, 2014 was passed on the praecipe and it was found that no further clarification was required and praecipe was rejected. In view of the fact that the praecipe was rejected as aforesaid, there is no merit in the present review petition. The review petition seeks to re-agitate

this issue. The Petitioner/Appellant has not satisfied any of requirements for filing the review petition. The review sought is not on discovery of any new matter or evidence which was within their knowledge nor is there any mistake or error apparent on the face of record nor any reason which entitles the Petitioner to file this review petition. The Petitioner could have filed an appeal against the order dated 16th August, 2014 but has chosen not to do so.

8. Vide order dated 15th December, 2014 passed in Civil Application No.248 of 2014 this Court directed that no coercive steps be taken against the applicant for non payment of arrears of maintenance. In order to enable the Applicant to adopt suitable proceedings as may be advised, the Respondent is directed not to adopt any coercive steps for a period of two weeks from today.

9. Review Petition is rejected. No order as to costs.

(A.K.MENON, J.)

(V.K.TAHILRAMANI, J.)