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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 197 OF 2016

Rishikumar s/o Punjaji Dhaneshwar,
Age: 39 years, Occu: Nil,
Residing at N-6, Cidco,
Chishtiya Colony, Aurangabad

..PETITIONER

VERSUS

Anita w/o Rishikumar Dhaneshwar,
Age: 33 years, Occu: Household,
Residing at Plot No. 16, Aasha Nagar,
Nandanvan Colony, Aurangabad

..RESPONDENT

Mr Hemant Surve, Advocate for petitioner;
Mr S. S. Randive, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 7th April, 2016

ORAL ORDER :

The petitioner – husband suffered the judgment and order of payment of maintenance passed by the learned Principal Judge, Family Court, Aurangabad on 4th August, 2014 in Petition No. E-224/2013, directing payment of maintenance of Rs. 5,000/- p.m. and Rs. 3,000/- p.m. to respondent Nos. 1 and 2 respectively. Petitioner was also directed to pay Rs. 3,000/- as costs of application to the respondents.

2. It is claimed by the petitioner that after order came to be passed, the petitioner tried to reconcile the broken relationship and has proceeded for institution of proceedings, particularly for restitution of conjugal rights which is pending at his behest.

(2)

3. According to the petitioner, after an attempt on his part to reconcile the broken relationship had failed, the respondent filed an application for execution of order of payment of maintenance.

4. In the execution proceedings, the petitioner came to know that there is exparte order of maintenance against him, of which he sought setting aside by approaching the Family Court. The petitioner also prayed for stay to the execution proceedings. The stay was based on the ground that the parties to the proceedings have entered into compromise on 20th July, 2015 and in view there of, earlier order of maintenance is required to be re-visited.

5. Learned Principal Judge, Family Court, Aurangabad, on 11th January, 2016, granted stay to the recovery proceedings bearing No. Cr. M. A. 2 of 2015, subject to present petitioner depositing 50% of amount of entire arrears, which is the subject matter of challenge in the present petition.

6. Heard Mr. Surve, learned Counsel appearing on behalf of the petitioner at length. According to him, the Court below, while passing the order of directing petitioner to deposit 50% of amount of entire arrears, impugned in the present petition, is without any basis, as the said order is passed without taking into consideration the material available on record. So as to substantiate his contention, he has invited my attention to the

(3)

observations made by the learned Family Court in the order granting maintenance, from which it could be inferred that the petitioner was proceeded against ex parte order, the compromise were arrived on 20th July, 2015. He would then submit that what was agreed as per the compromise, is payment of one time alimony. He would then submit that the order impugned is passed without considering the material as was placed on record before the learned Family Court and as such, is not sustainable.

7. Learned Counsel appearing on behalf of the respondent – wife supported the order passed by the learned Family Court. According to him, the learned Family Court, after taking into account the conduct of the petitioner, has passed the order directing deposit of 50% of amount of arrears. He would then submit that matter which is pending before the learned Family Court at the behest of the petitioner, is at interim stage and all the contentions would be considered at the stage of final hearing of the same.

8. With the assistance of the respective Counsel, I have perused the entire record. It is required to be noted that, admittedly, parties herein had arrived at settlement on 20th July, 2015, however, it depicts from the Roznama, produced by the respondent, that the present petitioner consistently remained absent before the learned Family Court, so as to avoid his responsibility to give effect to the said compromise. It appears that he has failed in reporting compliance of his obligations under the

(4)

settlement-compromise. Apart from above, it is required to be noted that the order which is impugned in the present petition, is passed during pendency of application of petitioner and the proceedings. The learned Family Court has protected present petitioner by imposing condition that he shall deposit 50% amount of the arrears of maintenance.

9. In my opinion, condition imposed by the learned Family Court in the order impugned appears to be reasonable, particularly having regard to the conduct of the petitioner of remaining absent before the learned Family Court, in the matter of giving effect to the compromise proceedings. His conduct as could be inferred from above, does not appears to be above board.

10. In the above background, in my opinion, no case for interference in extraordinary jurisdiction, is made out. Writ Petition, as such, fails and stands dismissed.

11. At this juncture, Mr. Surve, learned Counsel appearing on behalf of the petitioner submits that, order of dismissal be stayed for the period of two weeks as he wants to question this order before the Apex Court. Having considered the conduct of the petitioner as narrated hereinabove, in my opinion, it will be inappropriate to grant such request, particularly when the petitioner has not deposited amount as was ordered by the learned Family Court. As such, request is rejected.

(5)

12. Mr. Surve, learned Counsel appearing on behalf of the petitioner also requests that proceedings pending before the learned Family Court, particularly in the matter of setting aside the exparte order, be expedited. In my opinion, there is no case made out for issuing such direction, as there are other litigants, who are in queue before the learned Family Court waiting for their turn. No extraordinary circumstance is noticed, which prompts this Court to form an opinion to give priority to the petitioner over the other litigants. Hence said prayer is also rejected.

(N.W. SAMBRE, J.)

sjk