IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 93 OF 2015

Shivaji s/o Ratnakar Gajre,
Age: 31 years, Occ: Labour,
R/o. Pangra, Post Chitegaon,
Tal. Paithan, Dist. Aurangabad. ..APPLICANT

VERSUS

Pooja @ Priti w/o Shivaji Gajare,
Age: 27 years, Occ: Nil,
R/o. C/o. Dagdu Maruti Dhengle,
Shivshankar Colony, Aurangabad,
Dist. Aurangabad. ..RESPONDENT

Mr P.K. Chavare, Advocate for applicant;

CORAM : N.W. SAMBRE, J.

DATE : 24th August, 2016

ORDER :

Heard Mr. Chavare, learned Counsel for the applicant. The applicant was married with the respondent on 12th February, 2008. After the marriage, it is claimed by the husband that since respondent – wife was already carrying pregnancy, he filed the application under Section 12(1)(d) of the Hindu Marriage Act, 1955 for annulment of the marriage on 28th November, 2008, which was allowed on 6th May, 2010. The said judgment and decree is

the subject matter of challenge in the Family Court Appeal No. 22 of 2010 before this Court, in which the judgment of annulment of the marriage is stayed.

2. As the present applicant has refused to maintain the respondent – wife, taking same to be the basis, preferred the application under Section 125 of the Code of Criminal Procedure for grant of interim maintenance, which was moved on 3rd October, 2010 and allowed by the learned Court below on 17th February, 2010 awarding maintenance of Rs.750/-per month. This order is questioned in the present revision. Another order that is subject matter of challenge in the present revision is the enhancement order passed by the Court below in exercise of powers under Section 127 of the Code of Criminal Procedure enhancing the maintenance from Rs.750/- per month to Rs.1500/- per month by an order dated 16th April, 2015.

3. While questioning the legality and

validity of both the orders i.e. the order granting maintenance of Rs.750/- per month on 17th February, 2010 and order enhancing the maintenance to Rs.1500/- per month on 16th April, 2015, learned Counsel for the applicant would strenuously urge that the Court below has committed an error apparent on the face of the record in entertaining the application, as there exist valid decree of annulment of the marriage. He would in addition would urge that the respondent – wife was not entitled to the maintenance, much less enhancement therein as there are no specific findings as according to him, the applicant is a beggar and there is no fixed income. According to him, the applicant himself is finding hard to maintain himself out of begging profession. He would then urge that the presumption as drawn by the Court below that the applicant who is working as labour must be earning about Rs.300/- per day i.e. Rs.9000/- per month is impractical approach, as law does not permit, much less evidence to draw such presumption, as such, the orders granting

maintenance and enhancement are required to be interfered with by quashing.

4. At the outset, I must take judicial note of the fact that the order of Principal Judge, Family Court, Aurangabad passed in Petition No. B-18 of 2008 under Section 12(1)(d) of the Hindu Marriage Act, 1955 whereby the marriage of present applicant was declared as annulled and nullity is the subject matter of appeal before this Court and said judgment and decree is stayed by this Court. As such, the effect of relationship of the applicant with the non applicant continues as that of husband and wife.

5. The next issue which is required to be considered is, whether the present revision against the order of grant of maintenance passed on 17th February, 2010 awarding maintenance of Rs.750/- per month in Petition No. E-336 of 2008 passed by the Family Court, Aurangabad is maintainable or not. Though Mr. Chavare, learned

Counsel for the applicant would urge that since the subsequent order of enhancement of maintenance under Section 127 of the Code of Criminal Procedure is in continuation of original proceedings of grant of maintenance of Rs.750/- per month, the claim is well within the limitation, however, it is required to be noted that the said order was passed on 17th February, 2010. The applicant had not challenged the said order at any time i.e. more than last five years and but for the above submission of continuation of the proceedings of enhancement, in my opinion, the claim for challenge to the order of awarding of maintenance is hopelessly time barred as same suffers from delay and latches. Apart from above, it is to be noted that the said order of awarding maintenance is already acted upon, as the same was formed to be basis seeking enhancement under Section 127 of the Code of Criminal Procedure. The enhancement as ordered by the Court below is based on the source of income of the applicant. The applicant husband has stated to be labour in the proceedings which are preferred

before the Court below and also before this Court and based on that, the Court has presumed his monthly income @ Rs.9000/- per month.

6. It is required to be noted that it is not the case of applicant that he is not maintaining himself and is dependent on somebody else. Once it is noted that the applicant is able bodied person and is maintaining himself, law contemplates duty on him to maintain his family members, much less his wife i.e. non applicant herein. Based on the same, enhancement of Rs.1500/- per month in exercise of powers under Section 127 of the Code of Criminal Procedure, in my opinion, appears to be just and proper. No case for interference in the revisional jurisdiction is made out. As such, criminal revision application fails and stands rejected.

(N.W. SAMBRE, J.)

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