

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

CRIMINAL REVISION APPLICATION NO. 165 OF 2015

Shaikh Akhil Shaikh Mohammad ..Applicant
Age. 30 years, Occ. Tailor,
R/o. Jakhmatwadi, Tq. Gangapur,
Dist. Aurangabad.

Versus

1. Reshma @ Parvin w/o. Akhil Shaikh ..Non-applicants
Age. 26 years, Occ. Household,
R/o. C/o. Niroddin Shaikh (Qureshi
Abdul Qavi Abdul Quader) House
No.1-14-117, Near Jaisingh Pura,
Arab Khidki, Aurangabad.
2. Shifa d/o. Akhil Sheikh,
Age. 6 years, Occ. Education,
R/o. As above.
3. Sharukh s/o. Akhil Shaikh,
Age. 4 years, Occ. Education,
R/o. As above.

[Respondent Nos.2 & 3 being minor
under guardianship of Respondent No.1]

4. The State of Maharashtra

Mr.Patel Khizer, Advocate for the applicants.
Mr.M.L. Wankhede, Advocate for non-applicant Nos.1 to 3.
Mr.G.O. Wattamwar, A.P.P. for the non-applicant/State.

CORAM : Z.A. HAQ, J.
DATED : 16.12.2016

ORAL JUDGMENT :-

. Heard.

02. Rule. Rule made returnable forthwith.

03. The applicant has challenged the judgment passed by the Family Court directing him to pay Rs.1000/- per month to non-applicant No.1 and Rs.1500/- per month each to non-applicant Nos.2 & 3 towards maintenance. The judgment is passed after proceeding ex-parte against the applicant. The case of the applicant is that initially he attended the proceedings, however, in November, 2014 he has tested +ve for HIV and it was detected that reactive result indicates presence of antibodies/antigen to HIV virus. In support of the submission the applicant has placed on record copy of the report of Pathology Laboratory. The case of the applicant is that because of the disease which was detected, the applicant could not attend the proceedings and the Court proceeded ex-parte. Non-applicant Nos.1 to 3 have not disputed the contention of the applicant. The learned Advocate for the applicant, on instructions, has further submitted that to show bona fides, the applicant will continue to pay Rs.3000/- per month to non-applicant No.1 towards maintenance for non-applicant Nos.1 to 3 till the matter is disposed by the

Family Court.

04. Considering the above facts and the fairness shown by the applicant, in my view the following order would sub serve the ends of justice.

(i) The impugned judgment is set aside.

(ii) The matter is remitted to the Family Court, Aurangabad, for fresh trial. The Family Court shall permit the parties to place on record documents and to lead evidence.

(iii) The applicant and the non-applicant Nos.1 to 3 shall appear before the Family Court, Aurangabad on 27.01.2017 and abide by the further orders in the matter. As the matter is old and considering the facts of the case, it would be appropriate that the Family Court disposes the matter within six months.

(iv) This order is passed on the assurance given by the applicant that he will regularly pay Rs.3000/- (Rupees Three Thousand) per month to non-applicant Nos.1 to 3 towards maintenance. If the applicant fails to pay this amount, the

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Family Court may pass appropriate orders against the applicant, according to law.

(v) Rule made absolute in above terms. In the circumstances, parties to bear their own costs.

[Z.A. HAQ, J.]