

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3743 OF 2015**

Shri Dilip Vasant Bhosale

..Petitioner

Vs.

Sou Prabhavati Shriniwas Powalkar (Bhatkande)

..Respondent

Mr. Gajanan M. Savagave for the Petitioner

Mr. Prashant Bhavake for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 29th MARCH, 2016

P.C.

1 The Order dated 27-8-2014 passed by the Learned Judge of the Family Court, Kolhapur, striking off the defence of the Petitioner is taken exception to by way of the above Petition.

2 The defence of the Petitioner has been struck off in view of the fact that the Petitioner who is the Respondent in the proceedings in question i.e. PE No.45 of 2013, has not produced his PAN card and his Income Tax Returns which were directed to be produced by the Family Court by order dated 11-2-2014. The said order was passed in Application Exhibit 36 filed by the Respondent herein seeking a direction against the Petitioner who as indicated above is the Respondent in the said proceeding to produce the said documents. The justification for non production of the said documents given by the Petitioner did not commend acceptance to the Learned Judge of the Family

Court who has deemed it appropriate to strike off the defence of the Petitioner.

3 The above Petition has come up for admission before a Learned Single Judge of this Court M.S.Sonak J., on 10-4-2015 on which day the Learned Judge passed an order directing the Petitioner herein to deposit an amount of Rs.50,000/- within a period of two weeks from the said date and permitted the Respondent herein to withdraw the amount of Rs.25,000/-. The said directions are contained in paragraphs 4 and 5 of the said order which paragraphs are reproduced hereinunder for the sake of ready reference.

4] Taking into consideration the aforesaid submission, including in particular the submission that the petitioner is an engineer in service at Hyderabad, the impugned order dated 27 August 2014 can be stayed, subject to the petitioner depositing in the trial Court an amount of Rs.50,000/- within a period of two weeks from today. Accordingly, the impugned order dated 27 August 2014 is stayed subject to the petitioner depositing before the trial Court an amount of Rs.50,000/- within two weeks from today. In case, amount of Rs.50,000/- is not deposited within two weeks from today, then this stay order shall stand automatically vacated without any further reference to this court.

5] In the event Rs.50,000/- is deposited by the petitioner in the trial court, the respondent be permitted to withdraw an amount of Rs.25,000/-. This amount shall thereafter be taken into consideration at the stage of determination of the final maintenance amount. Further, if the amount of Rs.50,000/- is deposited by the petitioner, then the trial court to proceed with the matter after considering the defence raised by the petitioner.

Hence reading of paragraph 5 makes it clear that if the amount of Rs.50,000/- is deposited by the Petitioner, then the Trial Court was required to proceed with the matter after considering the defence raised by the Petitioner. Hence the deposit of the amount of Rs.50,000/- was made a condition precedent for setting aside the order of striking of the defence of the Petitioner. Though the amount has not been deposited within the time stipulated by the said order dated 10-4-2015, the same amount has been deposited in the extended period by the Petitioner. The said extension was granted vide order dated 20-4-2015 passed by the same Learned Single Judge.

4 Since the order dated 10-4-2015 can be said to be a self-operative order, the above Petition would have to be allowed in terms of the said order. Since the amount of Rs.50,000/- as directed by the said order dated 10-4-2015 has been deposited in terms of the directions contained in clause (5) of the said order, the impugned order dated 27-8-2014 would stand quashed and set aside and the Family Court is directed to proceed with the matter taking into consideration the defence of the Petitioner. The Petition is accordingly allowed to the aforesaid extent and disposed of.

[R.M.SAVANT, J]