

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.117 OF 2014

Mr. Chetan Vasant Dhotre. .. Appellant
Vs
Mrs. Sharmishtha Chetan Dhotre. .. Respondent
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Shri K.N. Kandekar for the Appellant.
Shri Priyal G. Sarda for the Respondent.

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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 31ST AUGUST 2016

P.C.

1. This Appeal is preferred by the Appellant husband for challenging the judgment and decree dated 5th March 2014 passed by the Family Court. By the said judgment and decree, the Petition for conjugal rights filed by the wife was allowed. A decree of maintenance was also passed. Clauses 4 and 5 of the said decree read thus:

“4. Petitioner and Arjun are already granted interim maintenance @ Rs.50,000/- and Rs.20,000/- per month respectively with effect from 19.3.2009 in petition No.A-1443/2008. Said order till 28.2.2014 is made absolute.

5. Respondent is directed to pay monthly maintenance @ Rs.70,000/- to the petitioner and @ Rs.30,000/- per month to Arjun with effect from 1.3.2014 till restitution of conjugal rights.”

2. Family Court Appeal No.196 of 2014 was preferred by the Appellant husband for challenging that part of the impugned decree by which a Petition being Petition No.E-424 of 2009 filed by the

Respondent wife under Section 125 of the Code of Criminal Procedure, 1973 was allowed by directing the payment of maintenance of the aforesaid amount. By an order dated 22nd March 2016, the said Appeal was disposed of as not maintainable by granting liberty to the Appellant to file appropriate proceedings in accordance with law.

3. In the said Appeal, Civil Application No.426 of 2014 was filed by the present Appellant for stay of the decree of maintenance. The said Application was disposed of by an order dated 1st December 2014. A limited stay was granted by this Court. As the Appellant did not comply with the conditions while granting the stay, a Civil Application No.122 of 2015 was taken out. By an order dated 24th July 2015, the said Civil Application was allowed by recalling the order dated 1st December 2014 in Civil Application No.426 of 2014. Clause 5 of the said order records a finding that the order passed on 1st December 2014 has not been complied with by the Appellant. Thus, the stay granted to the decree of maintenance stands vacated by virtue of the order dated 24th July 2015.

4. As of today, there is no proceedings filed by the Appellant husband challenging that part of the impugned decree by which the maintenance was granted under Section 125 of the Code of Criminal Procedure, 1973.

5. By an order dated 22nd March 2016 passed in the present Appeal, this Court referred to the order dated 24th July 2015 as well 17th April 2015 passed in Civil Application No.426 of 2014. This Court noted non-compliance on the part of the Appellant with the orders of the Court.

6. The learned counsel appearing for the Respondent wife states that even as of today, the compliance is not made by the Appellant either with the order dated 17th April 2015 passed in Civil Application No.426 of 2014 or with the order of maintenance passed by the Family Court.

7. Under the order dated 22nd March 2016, a show cause notice was issued to the Appellant calling upon the Appellant to show cause as to why the Appeal should not be dismissed by exercising the power under the provisions of Rule 11 of Order XXXIX of the Code of Civil Procedure, 1908.

8. The learned counsel appearing for the Appellant states that he has not received any instructions from the Appellant after 22nd March 2016 though he has communicated the said order dated 22nd March 2015 to the Appellant.

9. Thus, as of today, there is no challenge by the Appellant to the Clauses 4 and 5 of the impugned judgment and decree by which the maintenance was ordered to be paid to the Respondent wife and to the minor son. Moreover, not only that the amounts are not paid in terms of the Clauses 4 and 5 of the impugned judgment and decree, but even there is a non-compliance of the order dated 17th April 2015 in Civil Application No.426 of 2014.

10. Though the Appellant was aware of the order dated 22nd March 2015, he has not filed reply to the show cause notice till today.

11. Hence, in view of the willful default on the part of the Appellant, this is a fit case to exercise power under Rule 11 of Order XXXIX of the Code of Civil Procedure, 1908. Accordingly, the Appeal stands dismissed with no order as to costs.

12. Civil Application No.116 of 2016 does not survive and the same is disposed of.

(A.A. SAYED, J)

(A.S. OKA, J)