

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9014 OF 2015

Sanjay Tamanna Atalatti : Petitioner.
versus
Mrs. Anita Sanjay Atalatti : Respondent.

Mr. M B Jadhav for the Petitioner.
Smt.Seema Sarnaik a/w Mr. Varad Deore for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 28th November 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 18/06/2015 passed by the learned Judge of the Family Court No.2, Pune thereby rejecting the Application (Exhibit 61) filed by the Petitioner for dismissing the Darkhast Proceedings being No.48 of 2012 filed by the Respondent herein for execution of the Consent Terms filed in the Marriage Petition No.A-417 of 2008.

2 The said Application was filed inter alia contending that the Petitioner who is the Respondent in the said Darkhast Proceedings was not liable for the payment of maintenance as his liability was contingent upon the fact that both the husband and wife were to live together with their daughter in the flat in question. The said contention has been turned down by the learned Judge of the Family Court by observing that if such an interpretation is

given to the said clause of the Consent Terms then the same would result in destitution of the child and the wife. The learned Judge of the Family Court has accordingly dismissed the said Application (Exhibit 61) by the impugned order.

3 It is required to be noted that in the cross examination of the Petitioner it has come on record that the Petitioner as per his own desire is living in a flat which is rented by him. It is therefore not a case where the wife had made it impossible for the Petitioner to reside in the flat wherein she is residing with minor daughter Saniya. The above Petition had come up for admission on 08/09/2015 before a learned Single Judge of this Court on which day having regard to the fact that the liability of the Petitioner was akin to a money decree, the learned Single Judge was of the view that the Petitioner would have to deposit some amount. The above Petition thereafter came up for admission on 22/09/2016 before another learned Single Judge of this Court, on which day the learned counsel appearing for the Petitioner Mr. M B Jadhav on instructions of the Petitioner made a statement that the Petitioner would deposit an amount of Rs.3,50,000/- within three weeks. However, though we are towards the end of November 2016, neither the said amount of Rs.3,50,000/- nor even a part of the said amount has been deposited. This shows the manner in which the Petitioner is conducting himself. Hence having regard to the reasons mentioned in the impugned order by the learned Judge

of the Family Court whilst rejecting the Application (Exhibit 61), as also having regard to the fact that the Petitioner though having made a solemn statement before this Court has not abided by the said statement, the exercise of the writ jurisdiction of this Court is not warranted. The above Writ Petition is accordingly dismissed. It is clarified that the Respondent would be free to proceed with the said Darkhast Proceedings.

[R.M.SAVANT, J]