

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL REVISION APPLICATION NO. 398 OF 2015

Mr. Vipul Vasantrao Belkhede	... Applicant.
V/s.	
Mrs. Vrushali Vipul Belkhede & Ors.	... Respondents

Mr. Rameshwar Gite for the Applicant.

**CORAM : K. K. TATED, J.
DATED : 23/08/2016**

PC.:

. Heard learned Counsel for the applicant.

2 By this Revision Application, the Applicant husband is challenging the order dated 24.06.2015 passed by the Judge, Family Court, Nashik in Petition No. E-62 of 2013 under Section 125 of Code of Criminal Procedure, directing Applicant to pay sum of Rs.7,000/- per month to the Respondent as allowance of the maintenance from the date of application i.e. 13.03.2013 and also sum of Rs.2,000/- towards the cost of said Petition.

3 The learned Counsel for the petitioner submits that the Court below erred in coming to the conclusion that the Respondent wife is entitled to monthly maintenance of Rs.7,000/- per month. He submits that Court below failed to consider the fact that the Applicant himself is getting in hand sum of Rs.23,000/- only, by way of salary. He further submits that he is residing with his parents and elder brother to whom

he has to look after. He submits that the Respondent wife on her own left the matrimonial home. He submits that the Family Court failed to consider the fact that Applicant has filed application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. He submits that if the wife on her own left the matrimonial home, then she is not entitled to any maintenance under Section 125 of Code of Criminal Procedure.

4 The learned Counsel for the Applicant relies on evidence of Applicant which is on record. He submits that it is crystal clear from the Applicant's evidence that Applicant is always ready and willing to maintain the Respondent wife and hence, he filed application under Section 9 of Hindu Marriage Act. He submits that these facts were not considered by the Family Court at the time of passing the impugned order dated 24.06.2015. Therefore, in the interest of justice, this Hon'ble Court be pleased to set aside the said order by which the Family Court directed Applicant husband to pay sum of Rs.7,000/- per month to the Respondent wife as allowance of maintenance.

5 I heard the learned Counsel for the Applicant at length. Yesterday the matter was on board. After hearing for some time, the matter was adjourned today to take instructions from the Applicant husband whether he has deposited the entire amount of maintenance as awarded by the Family Court by impugned order dated 24.06.2015. The learned Counsel for the Applicant submits that Respondent wife filed execution application in which the executing court directed the applicant to deposit sum of Rs.50,000/-. He submits that as the Trial

Court was on leave, the said amount was not deposited.

6 It is to be noted that in the present proceeding, considering the evidence of Respondent wife dated 09.10.2013 shows that she has not left the matrimonial home on her own. But those circumstances constrained her to take such steps. The Applicant is working in the Central government. He is getting the salary of Rs.40,000/- to Rs.50,000/- per month. His father was also working in Bank and now getting pension of Rs.18,050/-. These facts were recorded by the Trial Court in paragraph 13 of the impugned order, which reads thus:

“In the cross-examination it has come on record that he is B.A.B.Ed and within in Central Govt. He has also admitted in the cross-examination that he is getting salary of Rs. 40,000/- to Rs.50,000/- per month. His father was also working in Bank and getting pension of Rs.18,050/-; if there is denial that father is getting pension Rs.20,000/-. Admittedly brother of opponent is serving in Nagpur. He has filed petition for restitution of conjugal rights No. 21/14 at Wardha and alternatively also prayed for divorce. The alternative prayer itself shows that his intention for divorce as he is not bothering for or pressing restitution of conjugal rights.”

7 The Applicant filed application under Section 9 of Hindu Marriage Act for restitution of conjugal rights. Considering the evidence of Respondent wife dated 09.10.2013, it is crystal clear that the wife has not left the matrimonial home on her own but it constrained her to do so. In any case, the Applicant's salary is near about Rs.40,000/- to Rs.50,000/- per month as he is working in Central Government. The Trial Court awarded only sum of Rs.7,000/- per month to the wife. It is to be noted that considering the present situation and the expenses required to a person to complete his day-to-day need, Rs.7,000/-

awarded by the Trial Court is reasonable amount.

8 Considering these facts, I do not find any substance in the present Revision Application.

9 Hence, Criminal Revision Application stands rejected.

(K.K.TATED, J.)