

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3 OF 2016 IN
FAMILY COURT APPEAL NO.104 OF 2015

Mr.Sachin Punde for the applicant
Ms Vedika Abhijit Walunj the respondent in person

P.C.:

2 The appeal was admitted on 26th August 2015. In clause 4 of the said order dated 26th August 2015, the present applicant was directed to clear all arrears within a period of four weeks. On 6th August 2015 when the appeal came up before the Division Bench of this Court, a direction was issued to the applicant to clear entire arrears of maintenance by 13th August 2015. By order dated 23rd September 2015, the Family Court Appeal preferred by the applicant was dismissed by passing the following order:

"1 Despite an assurance given by the Appellant/husband on the last date of hearing that he will pay the maintenance amount to the respondent/wife, he has not paid that amount and thereby has committed breach of the statement made by him to this Court.

2 Today neither the appellant nor his counsel is present, when the matter was called out. It appears that the Appellant is not keen in pursuing the Appeal. Therefore, the Appeal is dismissed for want of prosecution.

3 In view of the above, Civil Application No.189 of 2015 pending in the Appeal does not survive and the same is disposed of accordingly."

3 As of today, there is no dispute that the applicant is still in arrears of the maintenance. Though there is a dispute about the quantum of arrears of maintenance, even the applicant is not disputing that he is in arrears of an amount which is more than Rs.2,00,000/-.

4 The order dated 13th January 2016 passed by this Court records an assurance of the learned counsel for the applicant/appellant which reads thus:

"Learned Counsel for the appellant on instructions of appellant who is present in Court assures the Court that remaining maintenance amount would be deposited in the Executing Court. After depositing the amount the matter will be taken up."

5 There is a categorical assurance that the remaining maintenance amount will be deposited with the executing Court.

6 Thereafter, when the application came up on 14th October 2016, the order records that the grievance of the respondent appearing in person was that the applicant has not paid maintenance from February 2011. The order dated 25th November 2016 clearly records that unless the applicant by filing an affidavit satisfies the Court that he has complied with the decree of maintenance, the prayer for restoration cannot be considered.

7 As stated earlier, as of today, the applicant is in arrears of maintenance. Considering the aforesaid factual aspects, it is very clear that the applicant has committed a breach of the assurance given to this Court on more than one occasions. Therefore, this is not a fit case where indulgence should be shown to the applicant by restoring of Family Court Appeal. Accordingly, the civil application is rejected.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)