

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2434 OF 2015

Rajesh S/o Chandrabhan Dhoke

-vs-

Kanchan Rajesh Dhoke

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. T. Dhurwey, Advocate for petitioner.
Smt J.J. Kataria, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : JUNE 13, 2016

Heard.

The challenge in the present writ petition is to be order dated 18/03/2015 passed by the Family Court on an application moved by the petitioner seeking to raise objection to the execution proceedings.

The marriage between the petitioner and the respondent stood dissolved by a decree of divorce dated 13/10/1986. Thereafter the respondent initiated proceedings for grant of maintenance under provisions of Section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956. The Family Court by order dated 06/02/2001 directed the petitioner to pay Rs.1500/- per month to the respondent and an amount of Rs.1000/- per month to their son. This order came to be challenged in F.A. No.153 of 2003. On 29/09/2003, the said first appeal was disposed of after recording consent of the parties wherein the petitioner agreed to pay Rs.2500/- to the respondent as maintenance. In the proceedings initiated by the respondent vide Regular

Darkhast No.124 of 2013, the petitioner filed an application for dismissal of said proceedings on the ground that the decree passed in Petition C-19 of 1999 was without jurisdiction. The Family Court dismissed said application and said order is under challenge in the present writ petition.

Shri S. T. Dhurwey, the learned counsel for the petitioner submitted that the respondent being a divorcee was not competent to receive maintenance. He submitted that the decree passed by the Family Court in Petition C-19 of 1999 was an ex-parte decree without granting proper opportunity to the petitioner. Similarly the subsequent compromise entered into did not have any legal force as the respondent was not entitled to receive any amount of maintenance. The learned counsel placed reliance upon decisions in *AIR 2005 Bombay 180 Mrs Manisha Sandeep Gade v. Sandeep Vinayak Gade* and *2015(5) ALL MR 51 Namdeo Hambira Babar and ors. v. Gajanan Bhauso Babar and ors.*

Ms J. J. Kataria, the learned counsel for the respondent supported the impugned order. According to her, the order passed in F.A. No.153 of 2003 confirmed the entitlement of the respondent to receive maintenance. The challenge raised in the execution proceedings was without any basis and therefore the Family Court rightly dismissed the said application.

Perusal of the documents on record indicates that the order passed in Petition No.C-19 of 1999 dated 06/02/2001 was challenged in F.A. No.153 of 2003 by the petitioner. The proceedings were compromised and a decree came to be passed by which the respondent was to receive maintenance at the rate of Rs.2500/- per month. In that background

therefore when said decree has not been challenged, it could not be said that the respondent was not entitled to maintain the execution proceedings. The Executing Court after noticing these facts rejected the application below Exhibit-18.

The decisions on which the reliance has been placed by the learned counsel for the petitioner lay down legal propositions with which there cannot be any dispute. However in the facts of the present case, when the decree passed in F.A. No.153 of 2003 continues to bind the parties, the execution proceedings cannot be dismissed on the grounds sought to be raised by the petitioner.

In view of aforesaid, it cannot be said that the Family Court committed any error when it passed the impugned order. The writ petition is therefore dismissed. No costs.

Civil Application No.632 of 2016

The respondent seeks permission to withdraw the amount of maintenance deposited by the petitioner pursuant to the interim order dated 05/05/2015. Shri S. T. Dhurwey, the learned counsel for the petitioner states that the petitioner desires to challenge the order passed in W.P.No.2434 of 2015 and hence opposes the application. The interim order granted in favour of the petitioner is operating since 05/05/2015. Hence the same shall continue to operate for a period of four weeks from today. After expiry of period of four weeks, the respondent will be entitled to withdraw the aforesaid amount.

Civil application is disposed of.

JUDGE