

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

WRIT PETITION NO.4327/2015

Dr. Bimalchandra s/o Makhanlal Kirtania

...Versus...

Miss. Tuhina d/o Bimalchandra Kirtania through her natural Guardian
Smt. Chitra w/o Bimalchandra Kirtania

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.S. Motwani, Advocate for petitioner
Shri P.D. Meghe, Advocate for respondent

CORAM : SMT. VASANTI A. NAIK AND
A. S. CHANDURKAR, JJ.

DATE : 16.02.2016

By this petition, the petitioner challenges the order/communication of the Family Court, Nagpur, dated 17.6.2015 directing the Dean of the Himachal Dental College to attach 2/3rd salary of the petitioner Dr. Kirtania, who is working in the said Dental College, per month, till the arrears of maintenance to the extent of Rs.2,23,333/- are cleared.

The respondent had filed a Hindu Marriage Petition under Section 20 of the Hindu Adoption and Maintenance Act, claiming a sum of Rs.20,000/- per month from the petitioner towards maintenance. The petitioner is the father of the respondent. By allowing the petition, the family Court directed the petitioner to pay monthly maintenance of Rs.20,000/- to the respondent. Since the order was passed without hearing the petitioner, the petitioner has preferred an appeal against the said

order and the same is pending. The respondent filed execution proceedings for execution of the order directing payment of maintenance of Rs.20,000/- per month. In the said execution proceedings, as the family Court was of the view that the petitioner was in arrears of maintenance to the extent of Rs.2,23,333/-, the family Court had, by the impugned communication directed the Dean of the Himachal Dental College to attach 2/3rd salary of the petitioner, till the maintenance dues to the aforesaid extent were satisfied. The petitioner has challenged the said communication by the instant petition. It is stated on behalf of the petitioner by placing the details of amount deducted from the salary payable to the petitioner and remitted in the family Court in the execution proceedings towards arrears of maintenance that the monthly maintenance of Rs.20,000/- was duly paid from April, 2014 onwards and before that from June and July, 2011, a larger sum was paid to clear the arrears of maintenance that was liable to be paid to the respondent. It is stated that despite the payment of maintenance amount as per the directions of the family Court, the impugned communication was issued.

The learned Counsel for the respondent disputes the factual statements made on behalf of the petitioner. It is stated that till July, 2015 the amount liable to be paid by the petitioner was Rs.15,40,000/- and till July, 2015 the said amount was not paid. This is, however, admitted that the arrears have been cleared after making additional payment in the subsequent month and till 31.10.2015 the amount of maintenance due and payable till that date is deposited.

In view of the statements recorded herein above, it is clear that the petitioner is not in arrears of maintenance as on 31.10.2015. In the circumstances of the case, since the learned Counsel for the petitioner has made a statement that the petitioner would regularly pay a sum of Rs.20,000/- to the respondent, we allow the writ petition by quashing and setting aside the impugned order. We also accept the statement made on behalf of the petitioner that the petitioner would clear the arrears from November, 2015 till date by depositing the amount in this Court by the end of February, 2016.

Order accordingly. No order as to costs.

JUDGE

JUDGE

Wadkar