

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 1030 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 201 OF 2016

Sonali Balasaheb Kale & Anr.

.. Applicants
(Orig. respondents)

Versus

Balasaheb Nandu Kale

.. Respondent
(Orig. applicant)

.....
Mr Sandesh V. Hange, Advocate for applicants
Mr S. A. Gaikwad, Advocate for the respondent
.....

**CORAM : V.L. ACHLIYA, J.
DATED : 24.02.2017.**

PER COURT :

. The applicants (original respondents) have moved this application seeking permission to withdraw the amount of Rs. 1,34,000/- deposited towards the maintenance amount pursuant to the orders dt. 28.09.2016 and 25.10.2016 passed by this Court. By the impugned Judgment & Order, the Family Court was pleased to

order the respondent (i.e. applicant) herein to pay maintenance at the rate of Rs. 5,000/- per month to respondent No. 1 and Rs. 2,000/- per month to respondent No.2-daughter, aged about 2 years.

3. Due to non-compliance of the order, the respondents had filed execution proceedings. In the revision preferred against the said order, the applicant has challenged the order passed by the family Court on various grounds.

4. Learned counsel for the applicants submits that the respondent has contracted the second marriage.

5. Learned counsel for the respondent submits that, in spite of the decree for restitution of conjugal rights the applicant No. 1 has not resumed cohabitation and, therefore, she is not entitled to claim maintenance. In support of the submissions advanced, the learned counsel has referred and relied upon the decision of this

Court in the case of *Rajendra Wamanrao Dhomne Vs. Smt. Jaishri Rajendra Dhomne & Anr.* reported in *2015 ALL MR (Cri) 1879.*

5. In my view, the decision as referred has no bearing upon the application moved seeking withdrawal of the amount deposited in the Court. The respondent can certainly raise this contention at the time of the final adjudication of the matter. The marriage between the applicant and respondent No. 1 was solemnized on 02.05.2013. She is alleged to have been deserted when she was at the advanced stage of pregnancy. Looking to the fact that the age of the applicant is 23 years and age of the girl is about 2 years, certainly they require monetary assistance to survive. The respondent being the husband of the applicant No. 1 and father of applicant No. 2 owes duty to maintain them. I am, therefore, of the view that the request made by the applicant to allow her to withdraw the amount deserves to be granted.

6. Accordingly, the criminal application is allowed. The applicant No. 1 is permitted to withdraw the amount on giving undertaking that in case any adverse order is passed, she will deposit the entire amount in the Court.

7. Criminal Application stands disposed of in above terms.

[V. L. ACHLIYA]
JUDGE