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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.591 OF 2016

Santosh Vyankat Chavan ... **Petitioner.**

V/s.

Lalita Santosh Chavan and ors ... **Respondents.**

Mr. Sanjay Salvi, for the Applicant/petitioner.
Mr. Aviraj S. Tarar, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 5th OCTOBER, 2017.

P.C.

1] This revision is directed against the judgment and order of the Family Court, Pune, dated 23rd July, 2015, passed in a proceeding bearing P.E.No.46 of 2014, thereby allowing the said application filed by the respondent under Section 125 of the Code of Criminal Procedure and granting maintenance at the rate of Rs.2500/- per month each to respondent Nos. 1 to 3, from the date of application. The order is challenged, mainly, on the ground that there was no sufficient evidence before the Court to prove that the

present petitioner has refused or neglected to maintain the respondents and secondly there was no sufficient ground for the respondent No.1 to reside separately from the petitioner. It is submitted that said proceedings of maintenance application were decided exparte, without the say of present petitioner and/or without an opportunity given to him to cross examine respondent. Thirdly, it is submitted that for allowing the application, the trial court has considered the evidence of the respondent that the petitioner is staying with his sister-in-law Anita Chavan and for that purpose the trial court has relied upon the statement of petitioner and his sister-in-law Anita Chavan, produced with list exh.15. However, this case was not at all pleaded in the application and it was a new ground made out in evidence. No opportunity was extended to the petitioner to challenge the same. Fourthly, it is submitted that there is no evidence to show that the petitioner was having any business of Electrician. The trial court itself has held that respondent has not produced cogent proof to show that the petitioner is earning Rs.25,000/- to 30,000/- per month. Now reliance is placed by the petitioner on the document produced at page No.27 to submit that certificate issued by Vice President -Admin & HR, Rutu Holidays Cottages Pvt. Ltd., goes to show that

the petitioner is getting salary of Rs.5,500/- only as Electrician. Thus, according to learned counsel for the petitioner, the petitioner being not able to pay maintenance at the rate of Rs.2,500/- per month each to respondent Nos. 1 to 3, the impugned order passed by the trial court needs to be set aside.

2] Per contra, learned counsel for respondents has supported the order passed by the trial court, by pointing out that the petitioner, though duly served with the summons and appeared in the matter, but failed to file his say and therefore order of “No say” was passed against him. Thereafter at the time of leading evidence also, petitioner remained absent and failed to cross examine the respondent No.1. In such circumstances, the trial Court has no option but to proceed with the unchallenged evidence of respondent. The trial court has, after taking into consideration the entire material on record awarded reasonable sum of maintenance, hence no interference is warranted in the impugned order.

3] Having considered the submissions advanced at Bar by the learned counsels for both parties and after going through the evidence on record and the impugned judgment of the trial court, it

is apparent that the petitioner herein has filed petition for divorce bearing PA No.1103/2010, on the ground of cruelty, against respondent No.1 and the said petition came to be decided on merits and it has been dismissed on 11.12. 2013. Therefore, no fault can be found in the impugned order of the trial court, if the trial court has held that the very filing of such petition for divorce itself gives sufficient cause for the respondent wife to reside separately from the petitioner and for claiming maintenance for herself and for her children. Hence, even if, the subsequent ground made out in the course of evidence that the petitioner is residing with his sister-in-law and both of them have decided to stay together is overlooked, the fact remains that the parties are residing separately on account of the petitioner filing petition for divorce. The very filing of such petition making unfounded allegations of cruelty against her gives sufficient cause for respondent wife to reside separately and therefore, she becomes entitled to get maintenance for herself and for her children. Admittedly, till the passing of the order, the petitioner has not made any provision for their maintenance thereby indicating that the petitioner has refused and neglected to maintain respondent No.1 and their children and in such situation, she becomes entitled to get maintenance.

4] As regards the income of the petitioner, the trial Court has taken note of the fact that in divorce petition, petitioner has given his occupation as “business”. In paragraph 3 of his divorce petition, he has stated that, “*he is running his house by doing small and big electric work*”. Therefore, the petitioner is not disputing that he is working and also having business as such to get income from said work of electrician. From this, it can definitely be said that the petitioner is doing work of skilled labour and it becomes difficult to accept that the petitioner is not having sufficient income to pay maintenance as awarded by the trial Court.

5] It is pertinent to note that it was for the petitioner to produce on record the evidence regarding his earning. He could have produced salary certificate or he could have produced his income tax return. However, despite an opportunity given to him, he failed to file say resisting the application filed by the respondents. He even did not remain present to cross examine the respondent No.1. Therefore, on account of his own carelessness and negligence, the trial Court was constrained to proceed further with the matter and decide the application of the respondents on the basis of the evidence available

on record. Hence, now it cannot be accepted that the matter should be again relegated to trial Court to decide the same afresh merely because now the petitioner has produced some certificate of his salary. If some sufficient cause was shown by the petitioner for not filing his say to the application in the trial Court and for his not remaining present in the trial Court at the time of recording evidence, this Court would have been in a position to relegate the matter to the trial Court to decide afresh. However, no such sufficient cause is shown or made out. In such situation, no case is made out for remanding the matter to the trial Court.

6] As regards the judgment of this Court, in **Nishant Duragkar -vs- Sou. Sonia Duragkar 2014 ALL MR (Cri) 946**, on which reliance is placed by learned counsel for the petitioner, the facts of the said judgment are totally different. In that case, the default in appearance of petitioner before the trial Court was due to failure on the part of his advocate to inform him about the date of proceeding and in such situation as sufficient cause was made out, it was held that opportunity deserves to be given to applicant for placing his case for determining the question of entitlement of maintenance by respondent, hence the matter was relegated to the

trial Court.

7] As to the second judgment of this Court in **Chandrashekhar Sukhdeorao Raut -vs- Sau. Madhuri Chandrashekhar Raut 2013 (6) AIR Bombay (NOC), 225**, relied upon by learned counsel for petitioner, the facts of the said case also reveal that there was no evidence produced to show the income of the petitioner and hence it was necessary to remand the matter to the trial Court to decide quantum of maintenance.

8] Here in the case, petitioner was very much given an opportunity to contest the application of the respondents. He has appeared in the matter, but failed to file his say. He was also given an opportunity to cross examine respondent No.1, but he failed to remain present. In such circumstances, no case is made out for remanding the matter.

9] As regards the quantum of maintenance, whatever documents on which petitioner now wants to place on record are that of salary slip, he is having sufficient remedy available under Section 127 of Code of Criminal Procedure. So far as the impugned

order is concerned, I do not find any ground to hold that the maintenance awarded at the rate of Rs.2,500/- per month is either exorbitant or unreasonable so as to warrant interference therein. The revision, therefore, holds no merit. Hence stands dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.)