

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

CRI.WRIT PETITION NO.3418 OF 2013

Suresh Ramdas Bharsat

..Petitioner.

Vs

Ramdas Rajaram Bharsat and
Ors.

.. Respondents

Mr.Amey R. Deshpande, Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 04/04/2017**

PC:

1. Not on Board. At the request of Mr. Deshpande, taken up in production board. Heard Mr.Amey Deshpande, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 26.2.2013 passed by the learned Judge, Family Court Nashik (for short, 'trial Court') below Exhibit-16 in E Petition No. 54 of 2012. By that order, the trial Court partly allowed the application made by respondents no.1 and 2 (parents of the petitioner herein) and directed the petitioner to pay maintenance at the rate of Rs. 2000/- per month each to respondents no.1 and 2 from the date of filing of the application. The trial Court allowed the application made by respondents no.1 and 2 under section 125 of the Code of Criminal Procedure, 1973.

3. With the assistance of Mr. Deshpande, I have gone through

the impugned order as also the Petition. A perusal of the impugned order and in particular paragraph 8 shows that though the notice of the proceedings was duly served on the petitioner, he did not appear. The petitioner was also served with the report of the Counsellor. He did not even participate in the counselling proceedings and accordingly the Counsellor submitted report at Exhibit-10. It is further observed that despite being given several opportunities, he did not file reply and accordingly on 29.8.2012 order was passed to proceed ex-parte against the petitioner. A perusal of grounds (b) and (c) of the Petition shows that the petitioner was duly served with notice but he failed to appear in the court.

4. Mr. Deshpande states that the petitioner is present in the court. He has tendered photocopy of Identity Card issued by Election Commission of India, which is taken on record and marked "X" for identification. Upon taking instructions from him, he seeks permission to withdraw this petition with liberty to file application before the trial Court for recalling the order. He further states that the petitioner has not paid maintenance as per the impugned order and he is in arrears to the tune of Rs. Two lakhs approximately.

5. In view thereof, on the motion made by Mr. Deshpande, Petition is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression of merits

either way. All contentions of respondents no.1 and 2 are expressly kept open. The learned trial Judge will not entertain the application for recalling the impugned order unless and until the petitioner deposits the entire arrears of maintenance.

(R.G.KETKAR, J.)