

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

WRIT PETITION NO. 1248 OF 2018

GULAB BHIKA CHAVAN
VERSUS
SHUBHANGI GULAB CHAVAN

...
Advocate for the Petitioner : Shri Patil Vijay B..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th February, 2018

Per Court:

1 The Petitioner/ husband is aggrieved by the interlocutory order dated 07.12.2017 by which, the application Exhibit-12 filed in Regular Civil Appeal No.115/2017, praying for adjustment of the maintenance amount paid in another proceedings with the outstanding amount in the present proceedings, has been rejected.

2 The contention of the Petitioner is that the Honourable Supreme Court, in the matter of Sudeep Chaudhary vs. Radha Chaudhary, AIR 1999 SC 536, has observed that the amount awarded under Section 125 of the Code of Criminal Procedure for maintenance was adjustable against the amount awarded in the matrimonial proceedings under Section 24 of the Hindu Marriage Act. Reliance is also placed upon the judgment of this Court in the matter of Sanjay Pundlikrao Niranjane vs.

Swati Sanjay Niranjane, 2005 (4) Mh.L.J. 122.

3 In the light of the submissions of the learned Advocate for the
Petitioner, I have gone through the petition paper book with his assistance.

4 Monthly maintenance directed by the Court below by order
dated 18.03.2017 is under Section 18 of the Hindu Adoption and
Maintenance Act, 1956. An amount of Rs.1500/- per month was directed
by a subsequent order in a different proceeding under Section 125 of the
Code of Criminal Procedure.

5 The Petitioner has approached the Appellate Court
challenging the judgment and order dated 18.03.2017 delivered by the
Trial Court in Regular Civil Suit No.697/2012. In that matter, as the
maintenance amount was granted under Section 18 of the Hindu
Adoption and Maintenance Act, the Petitioner has put forth a case that the
said amount should not have been granted, inasmuch as, he is unable to
pay that much amount.

6 The appeal preferred by the Petitioner is pending before the
Appellate Court. The litigation between the parties is being pursued for
the past about seven years. While granting interim stay in the appeal, the
Appellate Court has directed the Petitioner to deposit 50% of the arrears
with reference to the order of the Trial Court under Section 18 of the
Hindu Adoption and Maintenance Act. It is on this count that the
Petitioner desires that the amount be adjusted with the amount of

Rs.1500/- that is being paid as maintenance in the proceedings under Section 125 of the Code of Criminal Procedure.

7 It is apparent that as an interim measure, the Appellate Court has protected the Petitioner and when the arrears have mounted to Rs.8,46,000/- as in 2017, the Petitioner is directed to deposit only 50% of the arrears of maintenance. The agony and hardships suffered by the wife cannot be ignored. When the Appellate Court has granted protection to the Petitioner by staying the impugned judgment on the condition of depositing 50% of the amount, I do not find that any hardships have been caused to the Petitioner. In order to avoid making the said payment, the Petitioner has come forward with a plea of equating the proceedings under the Hindu Adoption and Maintenance Act with that of Section 125 of the Code of Criminal Procedure by placing reliance upon the above cited judgments.

8 Considering the above and keeping in view the law laid down by the Honourable Supreme Court in *Syed Yakoob v/s K.S.Radhakrishnan*, AIR 1964 SC 477 and *Surya Dev Rai v/s Ram Chander Rai*, AIR 2003 SC 3044, I do not find that the impugned order, which is interlocutory, could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.