

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

WRIT PETITION NO. 12179 OF 2017

WITH

WRIT PETITION NO. 9578 OF 2015

WITH

CIVIL APPLICATION NO. 1766 OF 2017

Rakesh Chandanmal Jain

... Petitioner

Versus

Manisha Rakesh Jain

... Respondent

.....

Mr. Mani Sunder a/w Mr. Vikas Saindane for Petitioner.

Mr. S. P. Sheety a/w Deepti Mistray and Vijay Hinge for
Respondent.

.....

CORAM : K. K. SONAWANE, J.

DATE : 19th JULY, 2018.

P. C.:

1. Heard learned Counsel for the petitioner-husband and learned Counsel for the respondent-wife. Perused both the petitions and the relevant documents produced on record.

2. This Court, under order dated 9th July, 2018 passed the following order:-

“Heard Mr. Mani Sunder, learned Counsel for the petitioner and Mr. Shetty, learned Counsel for the respondent.

2. The matters were heard at length on 5th July, 2018 and were kept today for passing orders. It was made clear that if the petitioner is ready and willing to deposit entire arrears of maintenance of daughters, the Court will consider hearing of these Petitions on merits. If the petitioner is not ready and willing to deposit arrears of maintenance of daughters from the date of filing of the application namely, June, 2012 @ Rs. 15,000/- each, the Court will dismiss the Petitions only on this ground.

3. Mr. Mani Sunder again seeks time to take instructions.

4. Mr. Shetty submits that in pursuance of the Apex Court order dated 27th October, 2017, the petitioner has deposited Rs. 12,00,000/- in this Court. He may be permitted to withdraw that amount.

5. In view thereof, respondent is permitted to withdraw Rs.12,00,000/- deposited by the petitioner in this Court unconditionally. Withdrawal of deposit shall be subject to further orders that may be passed in these Petitions.

6. *S. O. to 19th July, 2018, to be listed in the supplementary board.”*

3. When the matters are called out, learned Counsel for the petitioner expressed inability to deposit the arrears of maintenance of daughters granted from the date of filing of application i.e. June, 2012 @ Rs. 15,000/- per month each. Learned Counsel for the petitioner-husband submits that due to the financial crises, it would not be possible for the petitioner-husband to deposit the arrears of amount. He prayed for hearing of the petitions on merit. Admittedly, the matter pertains to the interim amount of maintenance granted by the learned trial Court under Section 24 of the Hindu Marriage Act, 1955. It has also be reflects from the document that the petitioner-husband did not comply with the order passed by the learned trial Court for payment of maintenance amount regularly, and therefore, the right to adduce evidence was strike off by the learned trial Court. The petitioner approached to this Court by filing another writ petition against the impugned order of striking off the right of evidence of petitioner-husband. At this juncture, it is imperative to mention that the petitioner-husband, eventually, approached to

the Hon'ble Apex Court for fighting with the wife for redressal against the orders passed by the concerned courts in the matrimonial proceeding. In such circumstances, it is strange to appreciate that he has no financial ability to deposit the arrears of maintenance in the Court for its payments to his own daughters.

4. This Court, under order dated 9th July, 2018 specifically observed that if the petitioner-husband is not ready and willing to deposit the arrears of maintenance of the daughters, the Court will dismiss the petitions only on this ground. In view of the earlier order passed by this Court, today, the petitioner-husband expressed inability to deposit the arrears of maintenance. In these circumstances, there would not be any alternative, but to dismiss both the petitions filed on behalf of petitioner-husband before this Court.

5. In view of aforesaid discussion, both the petitions stand dismissed. No order as to costs.

6. In view of dismissal of writ petitions, civil application No.1766 of 2017 does not survive, therefore same also stands disposed of.

7. At this juncture, learned Counsel for petitioner requests to grant stay to this order for facilitating the petitioner-husband to approach to the appellate forum for redressal of his grievance. Taking into consideration, nature of the subject matter and inability of petitioner-husband to pay maintenance amount for daughters only due to financial crises, it seems that the petitioner-husband is not approaching to this Court with clean hands. There would not be any propriety to grant stay to the present order at the behest of petitioner-husband to afford an opportunity to him to approach to the appropriate forum. Hence, his request is hereby turned down.

(K. K. SONAWANE, J.)

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