

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

WRIT PETITION NO.2702 OF 2018

Dinesh Kumar Chandal ... Petitioner
Vs.
Mrs.Aditi Dinesh Chandel ... Respondent

Mr. R.D.Soni i/by M/s Ram and Company for the Petitioner.
Mr.Abhijit Sarwate for the Respondent.

**CORAM : SMT. BHARATI H.DANGRE, J.
DATE : MARCH 8, 2018.**

P.C.:

. The Petitioner has approached this court being aggrieved by the order dated 22nd February 2018, passed by the Family court, Pune, on an application filed by the Respondent-husband seeking hearing on Ex.24 and Ex.59, in pursuance of the order passed by the Hon'ble High Court on 6th December 2017, in Writ Petition No. 10872 of 2017. The Respondent-wife had moved an application under Section 24 of Hindu Marriage Act, claiming an amount towards maintenance for herself and her child and also for reimbursement of expenses which she had already expended on the child for prosecuting her studies and for other necessary expenses. The said application was exhibited as Ex.24. The Family

Court allowed the said application and directed the Respondent to pay interim maintenance of Rs.30,000/- per month to the Petitioner and Rs.20,000/- per month to the child. It was also directed that the order of interim maintenance shall take effect from the date of interim application. Ex.59 is an application moved by the Respondent-husband being aggrieved by the decision of the Petitioner-wife to change the school of daughter from Air Force school to a private school and seeking directions that the child be permitted to continue her studies in Air Force school.

When the matter was heard by the learned Single Judge of this court (Coram: M.S.Sonak,J.) an order came to be passed on 6th December 2017, by the consent of both the parties. Both the parties consented before court that the orders passed on Ex.24 (Application for grant of interim maintenance) and Ex.59 (Application filed by the Respondent re-admitting the child in the Army school) to be set aside and the Trial Court was directed to decide the application afresh and both the parties were given liberty to file fresh documents, if they so desire. Without prejudice to the rights of the parties, it was agreed that the

Petitioner would pay an amount of Rs.20,000/- towards maintenance of daughter and Rs.10,000/- towards maintenance of wife till the disposal of the two applications Ex.24 and Ex.59 and in addition, the husband would bear the expenses of the school of child. The order further noted, by consent that the arrears in terms of the order dated 30th October 2017, be deposited by the Petitioner in the Family Court within eight weeks from today and the order also further sets out that in case the arrears are not deposited within eight weeks as stipulated by the Family Court, the Family Court will not re-hear the applications at Ex.24 and Ex.59 and the Petition shall be dismissed without any further reference to the court.

2. The controversy before this court is about compliance of this particular stipulation and the subsequent order dated 17th February 2018, passed by the Family Court refusing to hear Ex.24 and Ex.59 on the ground that there is no compliance of clause No. 7 of the order passed by the Learned Single Judge of this Court on 6th December 2017.

The learned counsel for Petitioner, fairly states that the amount due towards the arrears came to be deposited in the

Family Court as per terms of the order passed by the Hon'ble High Court on 6th December 2017, but according to the learned counsel for the wife there is a delay of one day and the amount ought to have been deposited on 30th January 2018, but in fact, the amount is deposited on 31st January 2018. It is on account of this delay in depositing the said amount, the Family Court refused to grant hearing on Ex.24 and Ex.59 by the impugned order dated 17th February 2018.

The learned counsel for the Petitioner would vehemently argue that there is no delay in depositing the amount and by applying Section 9 of the General Clauses Act, the day on which the order is passed is to be excluded. Per contra, the counsel for the Respondent-wife would argue that order dated 6th December 2017, made it apparently clear that the amount has to be deposited within a period of eight weeks from 6th December 2017.

I do not wish to go into larger controversy as to whether provisions contained in the General Clauses Act are applicable to the proceedings before the Family court, as the case in hand can be decided on the peculiar facts involved. It is no doubt true that the order dated 6th December 2017, is passed by consent of both the parties. The amount has been deposited,

though after one day and an application was moved by wife seeking withdrawal of the amount and such permission is already granted by the Family Court, Pune. The wife is therefore, entitled for benefit of the amount that is deposited and in due course of time, she would be in a position to credit the amount toward maintenance of her own and of her daughter. In such circumstances, I am of the considered view that one day delay would not prejudice the wife and since the amount is now already deposited, which is also an amount towards arrears, the wife is entitled for the said amount and for its utilization. However, from the perusal of the proceedings it appears that the Petitioner is irregular in paying the maintenance amount and has waited till the Court make it a pre-condition for hearing of the application filed by him. The very purpose of grant of interim maintenance by the Family Court is to give some respite to the wife, who is unable to maintain herself and her daughter and when any default is committed by the husband in paying the amount. Its grant do not serve the purpose to enable the wife to meet day to day expenses and specifically, when there is a child taking education and there might be several situation and

circumstances like health of the child, which would require to be met immediately. The purpose of grant of maintenance is not to give her a lump-sum amount, but see to it that wife gets maintenance on regular interval and she is able to manage the affairs as expressed above. In these circumstances, I am inclined to condone one day delay. For the reasons stated above and in such circumstances, the order which is passed by the Family Court on 17th February 2018, which rejects the application on the ground that the High Court had stipulated a particular period within which the amount has been deposited and the Family Court has counted each day and arrived at conclusion that there is failure to reject the application for rehearing of Ex.24, Ex.59, is too much technical view, when the ends of justice can be met by permitting withdrawal of the amount. The impugned order, therefore, is liable to be set aside.

The Family Court is directed to proceed with hearing of Ex.24 and Ex.59. Similarly, an application Ex.220, which was also filed in relation to change of school, which was also rejected by the Family Court by order dated 22nd February 2018, for similar reasons also needs to be set aside. The learned Family

Court proceed with hearing of the three applications, Ex.24, Ex.59 and Ex.220 and both the parties are at liberty to tender any documents, if they so desire. The parties are also at liberty to file their respective replies to the application and Family Court after giving due opportunity is directed to proceed to dispose off the applications within period of six weeks from date of this order.

3. The Writ Petition is allowed in terms of prayer clause (a). However, it is made clear that the Petitioner-husband to ensure the payment of maintenance amount on regular basis and would ensure that the amount is transferred in her account by NEFT or any other electronic transfer mode available on any date between 1st to 5th of every month. The said arrangement of maintenance to be continued till the application-Ex.24 is decided afresh by the Family Court.

(SMT. BHARATI H. DANGRE,J.)

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