

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1770 OF 2016

Mehboob Ahmed Hussein Nagarbavadi ...Petitioner
vs.
Tazneen Mehboob Nagarbavadi and Ors. ...Respondents

Mr. Satyawrat Joshi, for the Petitioner
Mr. Ramdas Shelke, for Respondents.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 21, 2018

P.C.:

. Heard Mr. Satyawrat Joshi, learned counsel for the Petitioner and Mr. Ramdas Shelke, learned counsel for the Respondents.

2. The challenge in this Petition is to the order dated 1st March, 2016 made by the learned Family Court, Pune. Mr. Joshi, learned counsel for the Petitioner submits that the Family Court by its previous order dated 19th August, 2015 made it clear that the arrears for the period dated 23rd August, 2012 to 22nd August, 2014 cannot be added to the liabilities of the Petitioner. He submits that there was absolutely no reason to recall or review the order dated 19th August, 2015 because there was no error, much less, apparent on the face of record in the order dated 19th August, 2015. He

submits that since, by the impugned order dated 1st March, 2016 the Family Court has virtually reviewed its earlier order dated 19th August, 2015, without there being any grounds for review, the impugned order dated 1st March, 2016 is clearly in excess of jurisdiction.

3. Mr. Ramdas Shelke, learned counsel for the Respondents defend, the impugned order on the basis of reasoning therein, including, more particularly the reasoning in paragraph 8 thereof.

4. Paragraph 8 of the impugned order, this is what the learned Family Court has observed:

8. The observation of this Court that Rs. 5,04,000/- cannot be added to the liability of respondent as this Court awarded Rs. 50,000/- as a lumpsum alimony seems to have been made by assuming that Rs. 50,000/- has been awarded as interim maintenance for the period of 29/05/2010 till 22/08/2014 for all applicant Nos.1 to 4. But that is not the case. In fact the interim maintenance order is not disturbed by this Court or High Court. In fact this Court has increased the entire maintenance from Rs. 27,000/- to Rs. 32,000/-, so the period of 33 months interim maintenance at the rate of Rs. 21,000/- becomes due and payable. If we add 17 months of maintenance after 22/08/2014 till date, then the final figure would be 17 months x Rs. 32,000/- = Rs. 5,44,000/-. So the calculation provided by applicant in this application is as per the earlier order of this Court and it is a correct calculation as to the arrears.

5. From the aforesaid, it is very clear that the earlier order dated 19th August, 2015 was made on the basis of misreading the order made by this Court. Once this mistake was realized, the Family Court corrected the same by recalling the order dated 19th August, 2015. In fact, it is the duty of the Family Court to correct the said mistake. No party can be prejudiced on account of mistake on the part of the Court. No sooner the Court of law realizes that mistake has taken place, it is the duty of the Court to correct the same so that none of the parties before it are prejudiced. This is precisely what the learned Family Court done in the present case.

6. Accordingly, there is no reason to interfere in the impugned order dated 1st March, 2016. The learned counsel for the Respondent points out that in pursuance of the impugned order dated 1st March, 2016, the Respondent has already withdrawn the amounts referred to in the operative portion of the same.

7. For all the aforesaid reasons, this Petition is dismissed.

8. There shall be no order as to cost.

(M. S. SONAK, J.)