

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 12164 OF 2018**

Dinesh Kumar Chandel] Petitioner

Vs.

Principal Judge Family Court, Pune.] Respondent

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Mr. Bhushan A. Kulkarni, for Petitioner.

Mr. Abhijeet Sarawate a/w Ajinkya Udane, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 25 TH OCTOBER, 2018.

P.C.

Heard Mr. Kulkarni, learned Counsel for the petitioner and Mr. Sarawate, learned Counsel for the respondent at length.

2. Leave to delete respondent and implead Aditi Dinesh Chandel as respondent is granted. Amendment shall be carried out forthwith.

3. This Petition takes exception to the order dated 10th September, 2018 passed by the learned Judge, Family Court No.4, Pune below Exhibit 301 in Petition No. A-1414 of 2015. By that order, the learned trial Judge directed the petitioner to clear arrears till 31st October, 2018, failing which necessary orders regarding striking out defence will be passed. Till depositing amount of Rs.1,00,000/-, out of the arrears, petitioner's all applications including application at Exhibit 172 were kept in abeyance.

4. The respondent filed application under section 151 r/w Order-XXXIX, Rule-11 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for striking out defence for non compliance of the order dated 30th June, 2017 passed by the learned trial Judge below Exhibit 24 as also order dated 6th December, 2017 in Writ Petition No.10872 of 2017 and 8th March, 2018 in Writ Petition No.2702 of 2018 passed by this Court. The learned trial Judge instead of striking out defence of the petitioner herein has issued directions indicated hereinabove.

5. In support of this Petition, Mr. Kulkarni submitted that the respondent has played fraud in obtaining order of maintenance. He invited my attention to entry dated 3rd February, 2017 recorded in the statement of account of respondent with HDFC Bank, Bhandarkar Road Branch and income tax returns filed by the Advocate appearing for the respondent. The respondent is shown as his employee and thus, the respondent is gainfully employed. Despite that, she has claimed maintenance and thus has played fraud on the trial Court. He further submits that in pursuance of the order dated 22nd October, 2018, the petitioner has deposited Rs. 4,75,000/- in the Family Court, Pune. All that, he is seeking is that respondent No.1 may not be permitted to withdraw that amount till deciding contention raised by the petitioner about playing fraud upon the Court.

6. On the other hand, Mr. Sarwate supported the impugned order. In the first place, he submitted that after remand by this Court by order dated 8th March, 2018, application Exhibit 24 is yet to be decided. The petitioner cannot raise these contentions for the first time in this Petition and ought to raise these contentions in application Exhibit 24 and the Court will deal with these contentions. He further submitted that in paragraph 12 of the impugned order, the learned trial Judge has referred to Section 144 of C.P.C and observed that

restitution can be ordered and the respondent herein can be directed to return interim maintenance to the petitioner if the petitioner establishes his case. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, as per the order dated 8th March, 2018 in Writ Petition No. 2702 of 2018, this Court has directed the trial Court to decide application Exhibit 24 afresh. This application is pending. It will be open to the petitioner to agitate the contentions recorded hereinabove before the Family Court, Pune. The respondent will deal with these contentions before the Family Court, Pune. In paragraph 12, the learned trial Judge has also observed that in case, the petitioner succeeds as per section 144, restitution can be ordered and the respondent can be directed to return interim maintenance. Mr. Sarawate submits that in case the petitioner succeeds, respondent will return the amount.

8. In view thereof, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. As the petitioner has deposited Rs. 4,75,000/- in the Family Court, Pune, respondent is permitted to withdraw the said amount with express understanding that in case the petitioner succeeds, she will return that amount along with interest at such rate and within such period as may be fixed by the trial Court. All contentions of the parties are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]