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

39 WRIT PETITION NO.3384 OF 2016

AMOL VITTHAL BHAKSAR
VERSUS
SWAPNAIL AMOL BHAKSAR

...

Advocate for Petitioner : Mr. Kadu Shivraj B.
(Jape) Ansingkar Dipali S., Adv. For Respondent.

CORAM : P.R. BORA, J.
DATED : 10th June, 2019.

PER COURT:-

1. With consent of learned counsel appearing for the parties, the petition is taken up for final disposal.

2. The petitioner has challenged legality and validity of order dated 6th February, 2016, passed by Joint Civil Judge, Senior Division, Kopargaoon below application (Exh.36) in HMP No. 42/2015.

3. The aforesaid application was filed by the present respondent-wife, seeking directions against the present petitioner, to pay arrears of maintenance, amounting to Rs.18,000/-. The aforesaid application was opposed by the present petitioner by filing his Say on 27th January, 2016. It was the contention of the petitioner that since the present respondent has intentionally avoided service of summons of HMP proceeding filed by the

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petitioner for months together, she was not entitled to claim maintenance of the said period. The said contention of the petitioner was, however, rejected by the trial court and the impugned order has been passed, whereby the petitioner has been directed to pay the arrears of maintenance amounting to Rs.18,000/-. Aggrieved by, the petitioner has filed the present petition.

4. Learned counsel appearing for the petitioner submitted that from the record it was brought to the notice of the trial court that the present respondent was intentionally avoiding the service of summons of the HMP proceeding and she succeeded in doing so for the period of about 8-9 months. The learned counsel further submitted that in the circumstances, the respondent was not entitled to receive maintenance of the said period. The learned counsel submitted that the trial court has failed in not appreciating the contentions of the petitioner and passed erroneous order. The learned counsel, in the circumstances, prayed for setting aside the impugned order and to allow the petition by accepting the contentions of the petitioner submitted before the court below in the

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say filed by him below application at Exh. 36.

5. The submissions so made on behalf of the petitioner, have been strongly opposed by learned counsel appearing for the respondent. The contention of the petitioner, that Respondent was intentionally avoiding the service of summons of HMP proceeding, is denied by the respondent. The learned counsel submitted that for some valid reasons, the summons were not accepted by the respondent at the relevant time. The learned counsel further submitted that even otherwise that cannot be a reason for not awarding the maintenance to the respondent-wife of the said period. The learned counsel submitted that, in fact, the petitioner was under an obligation to *suo motu* provide certain amount of maintenance to the respondent during the intervening period. The learned counsel submitted that the trial court has rightly rejected the application filed by the petitioner and no interference is required in the impugned order.

6. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have perused the impugned order

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and the other material placed on record. After having perused the said material, it does not appear to me that any interference is warranted in impugned order. Though from the record it is difficult to deny the contention of the present petitioner, that the summons in the HMP proceeding was not intentionally accepted by the Respondent, that can not be a reason for refusing the maintenance to the respondent of the said period. The Trial court has rightly made observations in that regard. It does not appear to me that any interference is required in the impugned order. The writ petition being devoid of any merit, deserves to be dismissed and is accordingly dismissed.

7. It has to be noted that Advocate Dipali Ansingkar was appointed to represent the respondent-wife in the present petition through High Court Legal Services Sub Committee, Aurangabad. As such, her legal remuneration, to be paid to her, is quantified at Rs.5,000/-.

(P.R. BORA)
JUDGE

BDV