

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

44 WRIT PETITION NO.7352 OF 2019

VAISHALI ANIL PAWAR
VERSUS
ANIL GANGADHAR PAWAR

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Advocate for Petitioner : Mr. R. R. Karpe
Advocate for Respondent : Smt. M. V. Narwade h/f
Mr. V. P. Narwade

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. On 26.06.2019, I had passed the following order :

"1. The petitioner wife is aggrieved by the order dated 09.08.2018, vide which, the Trial Court has rejected application Exhibit-114 in Marriage Petition No. 7 of 2012.

2. The petitioner points out that pursuant to the order of this Court dated 15.06.2018 in Writ Petition No. 9004 of 2017, the defence of the husband petitioner, in the marriage petition, has been struck off. This was done because he was in arrears and had not deposited the maintenance amount. Some amount had been deposited. The Marriage Petition No. 7 of 2012 has also been disposed off due to non prosecution by the husband.

3. In the above backdrop, application Exhibit-114 was

filed by the wife praying for withdrawing the amount of maintenance that was deposited earlier by the husband. The Trial Court has rejected the application by the impugned order holding that unless the High Court grants a permission, the Trial Court had no jurisdiction.

4. *Prima-facie*, the impugned order has surprised me for being unsustainable.

5. Issue notice to the respondent, returnable on 02.08.2019. Humdast is granted on request".

2. The learned advocate for the respondent has strenuously opposed this petition and prays that the petition be dismissed with costs. In the alternative, she submits that the parties may be referred to a Mediator.

3. The learned advocate for the petitioner-wife submits that earlier also she was compelled to approach this Court in Writ Petition No. 9004 of 2017, which was disposed off by an order dated 15.06.2018. The Marriage Petition No. 7 of 2012 filed by the husband seeking divorce, has been dismissed by the trial Court on 16.08.2018.

4. Considering the above, I do not find that the impugned order dated 09.08.2018 can be said to be a pragmatic order. I

find that a pedantic view has been taken by the learned District Judge-2, Shrirampur (Coram : R. D. Patil) while observing in the impugned order that the wife may get necessary directions from the High Court.

5. This petition is therefore allowed. The impugned order dated 09.08.2018 is quashed and set aside. Application Exhibit-144 (wrongly mentioned as Exhibit-114) stands allowed. The petitioner-wife is permitted to withdraw the maintenance amount along with the accrued interest, if any.

(RAVINDRA V. GHUGE, J.)

vsm/-