

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

**FAMILY COURT APPEAL NO.52 OF 2019
WITH CA/8337/2019 IN FCA/52/2019**

Mahesh s/o Harikrishan Baheti
Age 36 years, Occu. Business
r/o Akashay Moible Shoppe,
Main Road, C-29, Sant Dnyaneshwar
Nagar, Chitegaon, Tq. Paithan,
District Aurangabad

... Appellant
(Orig. Respondent)

VERSUS

Deepa Mahesh Baheti
Age 32 years, Occu. Nil
R/o C/o Nandkishor Jainarayan
Totala, Row House No.B-38
Samyak Near Rajput Petrol Pump,
Pandharpur, Waluj, Aurangabad

... Respondent
(Orig. Petitioner)

Mr. Arvind Deshmukh, Advocate for the appellant
Mr. S.C. Sarda, Caveator for respondent No.1

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.
DATED : 30-07-2019**

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Heard learned counsel for the appearing parties.
2. Learned counsel Mr. Deshmukh on behalf of appellant vehemently submits that impugned order is unsustainable in law for want of following principles of natural justice. The order has been passed without hearing the petitioner. He submits that despite the consent terms having been accepted, yet the same have been considered to be withdrawn and order came to be passed. Further, he submits that while present respondent is employee of Bombay Stationers and appellant being in possession of evidence depicting same, without letting opportunity to prove his case, the matter came to be

decided. In addition, he submits that appellant has to bear with lot of other responsibilities which ought to have been considered and could have been noticed by the court, had the appellant been heard. Since proper opportunity had not come appellant's way, lot of matters to which attention could have been drawn, could not be noticed by court and order came to be passed. He submits that appellant had engaged professional services, and he cannot be attributed lapse in giving unremitting attention to the matter before Family Court. He submits that it is very difficult for the appellant to bear with the amount granted under impugned order as other responsibilities eat out lot of income of the appellant.

3. On the other hand, learned counsel Mr. Patil for the respondent submits that the appellant is running a thriving Electronic business. He is proprietor of Akshaya Electronics and Mobile. He also is a dealer of Dish TV of Tata. He is also having additional business under the name and style Amaya Recharge and he is also estate broker. Yet responsibility to maintain respondent is being neglected deserting them.

4. Perusal of the impugned order passed under Exh.18 shows that the appellant had participated in the proceedings for some time. However, it is being submitted that the matter lingered on and the lawyer could not keep track of the dates and the impugned order came to be passed. Impugned order does show that appellant had been absent during hearing of the application. In circumstances we consider it expedient that Exh.18 be heard afresh by the Family Court. Balance will have to met with, by directing appellant to deposit certain amount with the Family Court to show his bonafides, fate of which will depend on the out come of the application.

5. In the circumstances, appeal is allowed. Impugned order is set aside. Exh.18 is restored to its position for hearing parties afresh on the condition that the appellant shall deposit a sum of Rs.75,000/- (Rupees Seventy Five Thousand) in three months with the Family Court. The Family Court to hear Exh.18 thereupon and decide on the same within a further period of a month. All points are kept open. Appeal accordingly is disposed of.

6. In view of disposal of present Family Court Appeal, Civil Application No.8337 of 2019 also stands disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]