

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

**931 WRIT PETITION NO.134 OF 2019 WITH
932 WRIT PETITION NO.157 OF 2019**

**VAIBHAV NAMDEO UBALE
VERSUS
PRATIBHA VAIBHAV UBALE**

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Advocate for the Petitioner : Shri A. S. Gandhi
Advocate for the Respondent : Shri M. B. Ubale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th AUGUST, 2019.

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PER COURT :

1. In the earlier Writ Petition No. 134/2019, this Court has passed an order on 07/01/2019, which reads as under :-

"1. Issue notice to the respondent, returnable on 4th February 2019.

2. The petitioner shall deposit a sum of Rs. 60,000/- (Rs. Sixty thousand only) in this court within a period of three weeks from today and shall continue to deposit amount at the rate of Rs. 3,000/- (Rs. three thousand only), per month, from March, 2019 in this Court, during pendency of this writ petition. On aforesaid condition, execution of impugned order be kept in abeyance.

3. In addition to service through court process, petitioner shall serve the respondent by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect within a period of one week before returnable date. In case of failure to deposit the amount, as aforesaid, to serve the respondent privately and file affidavit as directed before returnable date, ad-interim relief, as has been granted, would cease to operate."

2. An amount of Rs. 60,000/- has been deposited and the respondent / wife has withdrawn the said amount. Rs. 3,000/- have been deposited on 27/05/2019, on 25/06/2019 and on 29/07/2019. Rs. 3,000/- do not appear to have been deposited for the months of March and April 2019.

3. In the Second Writ Petition No. 157/2019, the petitioner husband is aggrieved by the order dated 25/10/2018, by which, his application Exhibit 33 seeking leave to withdraw Hindu Marriage Petition No. 113/2017, has been rejected. He had prayed for leave to withdraw the said proceeding with regard to the judicial separation and had prayed for liberty to

file a fresh proceeding for seeking divorce. The learned Advocate for the husband submits, on instructions, that now he would simplicitor withdraw HMP No. 113/2017 and does not desire to seek liberty to file a petition for seeking divorce. On these lines, he had moved an application before the Trial Court at Exhibit 39 and the same has been recently rejected on 20/06/2019 for the reason that the petitioner husband desires to by pass the law and avoid implementation of the orders of maintenance passed earlier.

4. The learned Advocate for the respondent / wife submits that the petitioner should deposit the entire outstanding maintenance amount in this Court and since the respondent / wife is dragged in litigation for two years, she should be compensated with heavy costs. So also, her right to claim maintenance if the husband files any fresh proceedings, be preserved. He submits that the petitioner may be permitted to withdraw the proceedings only after all the arrears are paid.

5. In view of the above, Writ Petition No. 157/2019 is partly allowed. The impugned order dated 25/10/2018 is

quashed and set aside and application Exhibit 33 is partly allowed on the following conditions :

(a) The petitioner shall deposit the unpaid maintenance amounts @ Rs. 3,000/- per month from June 2017 onwards, in this Court, on or before 25/09/2019.

(b) The amount of Rs. 60,000/- and those amounts deposited in this Court by the husband shall be adjusted against such dues.

(c) The maintenance of Rs. 3,000/- shall be deposited in this Court up to September 2019.

(d) By way of costs, the petitioner shall also deposit an amount of Rs. 10,000/- in this Court, on or before 25/09/2019.

(e) Only after the said amount is deposited in this Court, the respondent / wife shall appear before the Trial Court in HMP No. 113/2017 and shall file a purshis on or before 05/10/2019 declaring that the husband has deposited the entire amounts and the Trial Court would thereafter dispose off HMP No.113/2017 as withdrawn.

(f) The wife would be at liberty to withdraw the entire amounts deposited.

(g) In the event, the petitioner / husband initiates any proceeding, save and except for the cause that was set out in HMP No. 113/2017, before any Court or authority, the wife would be at liberty to seek maintenance and the concerned Courts would consider the said request on its own merits.

6. In view of the above and subject to the compliance of the directions as stated above, Writ Petition No. 134/2019 stands disposed off.

7. Needless to state, if any of the directions set out above are not complied by the petitioner / husband, the Trial Court would refuse to dispose off the pending proceedings.

(RAVINDRA V. GHUGE, J.)

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