

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3139 OF 2018

Kakasaheb Butenath Waghmare	...	Petitioner
Vs.		
Rajashri Kakasaheb Waghmare	...	Respondent

Mr. Rahul I. Tiwari for Petitioner.
Mr. Tejesh Dande a/w. Mr. Bharat Gadhavi and Mr. Vishal Navale i/b.
Tejesh Dande & Associates for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 10, 2019

P.C. :

Heard Mr. Tiwari, learned Counsel for the petitioner and Mr. Dande, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 09.02.2018 passed by the learned 15th Joint Civil Judge, Senior Division, Pune below exhibit-43 in M.P.No.885 of 2016. By that order, the learned trial Judge rejected application exhibit-43 filed by the petitioner herein for setting aside no-cross order dated 18.01.2018 passed below exhibit-33. The learned trial Judge also issued show cause notice to the petitioner herein as to why an action should not be taken against him for contempt of Court as he failed to remain present before the Court as per the direction given in the order dated 24.11.2016 below exhibit-1. Rule. Mr. Dande waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. Mr. Dande has invited my attention to the order dated 21.08.2017 passed by this Court in Miscellaneous Civil Application No.114 of 2017. That application was filed by the respondent wife under Section 24 of

the Code of Civil Procedure, 1908 seeking transfer of Hindu Marriage Petition No.A-1528 of 2016 filed by the petitioner husband seeking divorce pending before the Family Court at Bandra, Mumbai to the Court of Civil Judge, Senior Division at Pune. He submitted that in paragraph 3(vi), petitioner herein undertook to regularly pay maintenance to the respondent until further orders are passed by the appropriate Court. This Court also accepted the undertaking. Mr. Dande submitted that despite giving solemn undertaking to this Court, the petitioner has not paid the maintenance from February 2018. He submits that Divorce Petition filed by the petitioner is dismissed by the Family Court, Bandra. He further submits that no further orders are passed by the appropriate Court relieving the petitioner from payment of monthly maintenance.

4. Mr. Tiwari submitted that petitioner is inclined to challenge the order of dismissing the Divorce Petition.

5. Mr. Dande submitted that the impugned order may be set aside subject to the petitioner clearing the arrears of maintenance within two weeks from today as also assuring this Court that he will remain present before the trial Court, as and when required.

6. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. Impugned order dated 09.02.2018 passed below exhibit-43 in M.P.No.885 of 2016 is set aside;
- b. Petition shall clear the arrears of maintenance from February, 2018 till 31.01.2019 within two weeks from today. He will go on regularly paying monthly maintenance from February 2019, on or before 10th day of the next succeeding months;

- c. The petitioner will remain present before the trial Court, as and when required;
- d. The parties are at liberty to file application for disposal of the Petition in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order keeping in mind the fact that Marriage Petition for restitution of conjugal rights is pending since 2016.
- e. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab