

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5836 OF 2019

Trupti Harsh Kudal

Age : 35 years, Occ.: Service,
R/o : C/o Mr. Vikas Rajaram Chothe
R-2/6, Shri. Laxmi Vihar Society,
163, Malwadi Road, Hadapsar,
Pune – 411 028

.... Petitioner

Vs.

Mr. Harsh Chandrakant Kudal

Age : 37 years, Occ.: Business,
R/at Plot No. 19, Ganga Society,
Sahakar Nagar Part 2,
Pune – 411 011

.... Respondent

Mr. Ashok B. Tajane for the Petitioner

Mr. Hitesh P. Vyas for the Respondent

Coram : SMT. SADHANA S. JADHAV, J.

Date : 13th June 2019

P.C.:

1. Heard.

2. The petitioner herein challenges the order dated 11th
April 2019 whereby the Principal Judge, Family Court No.1, Pune

had directed the respondent-husband to deposit the arrears of interim maintenance of Rs.5,00,000/- within one month from 11th April 2019 and in the eventuality, he fails to deposit the said amount, the defence would be struck out under Order 39, Rule 11 of Code of Civil Procedure. The present case has a chequered history. Earlier, the Family Court had granted maintenance to the tune of Rs.20,000/- to the petitioner, Rs.20,000/- to their daughter Ridhima and Rs.15,000/- towards rent vide order dated 3rd May 2017.

3. The respondent herein had challenged the said order by filing Writ Petition No.7327 of 2017. The said order was also challenged by the petitioner by filing Writ Petition No. 9446 of 2017. Both the petitions were heard together. By an order dated 4th December 2017, this Court (Coram : R.D. Dhanuka, J.) directed the respondent to deposit arrears of maintenance of the aforesaid amount in two instalments i.e. 50% amount within four weeks and balance 50% amount within eight weeks from 4th December 2017. This Court has also been pleased to pass the order :

“In the event of the husband committing any default in clearing the arrears of interim maintenance, the impugned order passed by the Family Court No. 1, Pune on 3rd May 2017 to stand restored”.

4. The respondent herein had approached the Hon'ble Apex Court by filing an S.L.P. In the course of the proceedings before the Hon'ble Apex Court, the parties were referred for mediation. The mediation had failed. By an order dated 28th January 2019, the Hon'ble Apex Court had passed an order as follows :

“Taking into consideration the allegation made by the counsel for the petitioner-husband that the respondent-wife is not co-operating in the disposal of the matter pending before the trial court, we direct the respondent-wife to appear regularly before the trial Court so as to enable it to conclude the trial within a period of six months”.

The operative order is as follows :

“Pending disposal of the matter before the trial court, we direct the petitioner-husband to pay maintenance to the respondent-wife as per the order of the High Court”.

5. As on today, learned counsel for the petitioner submits that the words “order of the High Court” passed by the Hon'ble Supreme Court would include Clause 5 of the order dated 4th

December 2017. It is clear from the chart submitted by the respondent and agreed by the petitioner that as on today, the respondent is not in arrears. Learned counsel for the respondent, upon instructions, submits that the respondent undertakes to continue to pay the maintenance @ Rs.30,000/- during the pendency of the proceedings.

6. According to the learned counsel for the petitioner, the words “to pay maintenance by the Supreme Court would mean confirmation of the order including rent @Rs.15,000/-”. This would amount to interpretation of the order of the Apex Court which is self-speaking. The Apex Court has directed the respondent to pay maintenance at the rate of Rs.30,000/- as directed by this Court vide Clause 1 of the order dated 4th December 2017 and what is being pressed is that the Hon'ble Supreme Court has not interfered with the order of the High Court.

7. According to the learned counsel for the petitioner, there is a default clause and therefore since the respondent had not

deposited the arrears before 4th January 2019, the Family Court order shall stand restored. The chart would show that after the order of the High Court, the respondent had deposited Rs.60,000/- on 29th December 2018, Rs.30,000/- each on 2nd April 2018 and 18th April 2018 and Rs.4,60,000/- on 10th May 2019 and Rs.40,000/- on 11th May 2019 thereby depositing the total amount of Rs.15,20,000/-.

8. It is pertinent to note that the respondent has rather deposited an amount of Rs.40,000/- and has sought clarification before the Supreme Court in respect of the quantum of the amount, which is to be paid. In view of this, it would not be necessary to interpret or modify any order either of Family Court or of the Apex Court. As on today, the respondent has deposited the amount of Rs.3,50,000/- in excess, which is @ Rs.30,000/-, as per the order of the Hon'ble High Court.

9. It is a matter of record that the petitioner is not attending all the dates before the Family Court in order to enable it to conclude the trial within six weeks as directed by the Hon'ble Supreme Court and therefore this Court is constrained to further observe that in the eventuality that the petitioner does not remain present on three consecutive dates, from the next three dates, the Family Court may strike off the defence of the petitioner in order to implement the order of the Apex Court in letter and spirit. With these observations, the petition being sans-merits stands dismissed.

(SMT. SADHANA S. JADHAV, J.)