

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Revision (REVN) No. 174 of 2017

Mohd. Ali Dosani and Another
Vs.
Shahin Zehera Dosani and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.A.R. Agrawal, Advocate for applicants.
Mr. R.R. Prajapati, APP for non-applicants.

CORAM : MANISH PITALE, J.

DATED : JULY 17, 2019

The applicants herein have challenged the Judgment and order dated 17/02/2016, passed by the Family Court, whereby the applicant No. 1 has been directed to pay maintenance to the non-applicant No.1 (wife) @ Rs.4000/- per month and to pay maintenance @ Rs.3000/- per month each to the non-applicant No.2 (daughter) and the applicant No.2 (son). This Court is of the opinion that it was unnecessary to show the applicant No.2 (son) as one of the applicants aggrieved by the impugned Judgment and order because direction to pay maintenance has been given only against the applicant No.1. Be that as it may, this Court considered the challenge raised in the present application.

2. The contention of the applicant No.1 is that

the impugned Judgment and order has been passed ex-parte and that he was never served with notices. According to him, as he was not served, the grievance raised by the non-applicants could not be contested on merits by the applicant No.1 herein. It is also pointed out that the applicant No.2 (son) joined the company of applicant No.1 some time in the year 2016, after passing of the impugned Judgment and order.

3. The observation made by the Family Court pertaining to necessity to proceed against the applicant No.1 ex-parte, as contained in paragraph No.5 of the impugned Judgment and order reads as follows.

“After filing of this petition, for two times notices were sent to the respondent by R.P.A.D. But his house was found locked and therefore, notices could not be served upon him. Thereafter, notice was published in daily “Navbharat” dated 19th June, 2015, but, the respondent did not appear. Therefore, petition proceeded exparte against him. The notice of exparte hearing was also sent to the respondent by R.P.A.D. But it came back as the respondent was not found at his place.”

5. It appears that although notice was published in daily newspaper and yet the applicant No.2 did not appear before the Family Court, but, it is also noted that when a notice of ex-parte hearing was sent to him by registered post AD, it came back with remarks that he was not found. Therefore, there appears to be some substance in the grievance raised

on behalf of the revision applicant No.1 herein.

6. When this application was listed before this Court earlier in point of time, there was some dispute between the parties as regards the extent of amount arrears that was liable to be paid in terms of the impugned Judgment and order. Taking into account of the fact that the applicant No. 2 (son) joined the company of applicant No.1, the rival parties had given calculation of the amount of arrears due and there appears to be some difference in the quantum claimed by the rival parties. On this basis, this Court had asked the learned counsel for the parties to take instructions as regards the exact quantum of arrears and that if the impugned Judgment and order is set aside, whether the applicant No.1 would continue to pay maintenance to the non-applicant No.1 (wife) and non-applicant No.2 (daughter) if the impugned order was set aside and matter was remanded to the Family Court for fresh consideration.

7. The learned counsel for the applicants has taken instructions and it is submitted that the parties agreed that the applicant No.1 shall pay arrears of Rs.1,50,000/- subject to further claims that may be made by the rival parties before the Family Court.

8. The applicant No.1 has also submitted that he would continue to pay non-applicants No.1 and 2 @

Rs.7000/- per month if the impugned order is set aside and the matter is remanded subject to final orders that may be passed by the Family Court.

9. In view of the above, the present revision application is disposed of with following directions :

a) The applicant No.1 shall pay amount of Rs.1,50,000/- to the non-applicant within a period of two months from today towards arrears due as per the impugned Judgment and order.

b) This would be subject to such further claims that may be made by the rival parties before the Family Court. The Family Court shall decide the aforesaid issue after giving opportunity to the rival parties.

c) The impugned Judgment and order stands set aside and the matter is remanded to the Family Court for fresh consideration. The Family Court is directed to decide such remanded proceeding within a period of six months from today and consequently the parties shall appear before the Family Court on **22nd July, 2019**.

d) The applicant No.1 shall continue to pay the non-applicant No.1 (wife) @ Rs.4000/- per month and the non-applicant No.2 (daughter) Rs.3000/- per month towards maintenance during pendency of the remanded proceeding, subject to final orders that may be passed by the Family Court, after hearing rival parties.

e) The present revision application is disposed of in above terms.

JUDGE

MP Deshpande