

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12284 OF 2018

RAJESH KACHARU GAIKWAD
VERSUS
PRACHI RAJESH GAIKWAD

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Advocate for Petitioner : Shri Ambad Shrinivas A.
Advocate for Respondent : Shri Munde Sandeep D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 18, 2020

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PER COURT :-

1. On 26.2.2019, this Court had passed the following order:-

"1 On 01.11.2018, this Court had passed the following order :-

"1. The petitioner/husband seeks to challenge the order passed by the executing Court dated 25/11/2017, by which, it is concluded that R.D. No. 3/2015, filed by the wife for recovery of Rs.71,000/- arrears of maintenance, is within limitation. The said order is sought to be challenged by filing this petition on 03/09/2018.

2. I, therefore, made it clear to the learned Advocate for the petitioner that unless he deposits the amount of Rs.71,000/- in this Court,

this petition need not be entertained.

3. *The learned Advocate for the petitioner submits that he will deposit the said amount before the Executing Court on or before 30/11/2018.*

4. *On the condition on deposit, this matter shall be listed for admission and the petitioner will have to produce the receipt of the deposited amount.*

5. *Stand over to 10/12/2018 in the urgent admissions category."*

2 *The Petitioner has deposited the amount of Rs.71,000/- in this Court on 14.01.2019.*

3 *The issue of limitation of three years under Article 105 of the Limitation Act is said to be attracted in this matter. The impugned order dated 25.11.2017 is an unreasoned and a cryptic order which reads as under :-*

"Perused application and say. Heard both sides. The record shows that the petition is well within limitation. Hence, D.H. to proceed with petition according to law."

4 *The grievance of the Petitioner is that the order granting interim maintenance was passed on 21.07.2010 in HMP No.30/2009 which has been dismissed on 12.07.2011. The arrears of maintenance*

from 31.08.2009 till 12.07.2011 are sought to be recovered by initiating Regular Darkhast No.3/2015 after three years. It is, therefore, contended that the said proceedings were time barred.

5 I do not find any reason assigned by the Trial Court while passing the impugned order. Therefore, it does not reflect whether, the Trial Court has applied its mind to the application Exhibit 13 in which, the issue of limitation was raised.

6 Issue notice to the Respondent returnable on 29.03.2019.

7 Until the returnable date, the Trial Court would adjourn Regular Darkhast No.3/2015.”

2. The learned Advocate appearing for the wife submits that under Article 136, the limitation for filing execution proceeding seeking recovery of arrears of maintenance is restricted to 12 years and the contention of the husband that the proceedings initiated by the wife were beyond limitation, is incorrect. Reliance is placed on the judgment delivered by this Court in the matter of Parag Subhash Parelkar Vs. State of Maharashtra and another - 2018 (6) Mah. L.J. 504.

3. I find that the impugned order, which is reproduced above,

does not indicate any application of mind to the contentions of the parties and does not even make a reference to the law applicable. A single sentence order is passed concluding that the record shows that the petition is well within limitation. I find that such an order ought not to be sustained since a judicial officer or even a quasi judicial officer is not expected to pass such an order.

4. In view of the above, this petition is allowed. The impugned order dated 25.11.2017 is quashed and set aside and application Exhibit 19 is restored to the file of the executing Court in R.D.No.3 of 2015. The litigating parties shall appear before the executing Court on 7.3.2020. They would advance fresh arguments on Exhibit 19 and the executing Court shall decide the said application as expeditiously as possible and preferably on/or before 30.4.2020.

5. The amount of Rs.71,000/- deposited by the petitioner in this Court, along with accrued interest, shall be transferred to the said executing Court expeditiously.

(RAVINDRA V. GHUGE, J.)

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