

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

17 CRIMINAL WRIT PETITION NO. 1935 OF 2019

Hanumant S/o. Rajasaheb Magar, **...PETITIONER**
Age-36 years, Occu-Service,
R/o. Plot No. 175, Swaraj Nagar,
Behind Guru Lawns,
Survey No. 48, Mukundwadi,
Dist. Aurangabad

VERSUS

1. Rajashri W/o. Hanumant Magar, **...RESPONDENTS**
Age-29 years, Occu-Service,
R/o. C/o. Mohan Narayan Hendge,
Plot No. 44, Rajiv Gandhi Nagar,
N-2, CIDCO, Near Shani Mandir,
Aurangabad
2. Shrawani D/o. Hanumant Magar,
Age-11 years, Occu-Student,
(Minor U/g. Of respondent No.1)

Mr. Abhishek Kulkarni, Advocate for the petitioner
Mr. A. L. Kanade, Advocate for the respondent Nos. 1 and 2

CORAM : SURENDRA P. TAVADE, J.

DATE : 04-10-2021

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With the consent of parties the matter is taken up for final hearing.

2. The petitioner has challenged the order of maintenance passed by the Family Court, Aurangabad in Petition No. E-278 of 2016 whereby the Family Court has granted monthly maintenance of Rs. 3,000/- to the respondent No.1 and Rs. 4,000/- to respondent No.2 since the date of application. The respondents are also awarded cost of Rs. 3,000/-. It is contended by the petitioner that he appeared in the petition before the trial court, but, did not file the reply. The application was not decided on merits. Therefore, it is prayed that the order passed by the family court be set aside.

3. On the other hand learned counsel for the respondent submits that the application was filed in the year 2016. The petitioner appeared in the matter and deliberately did not file reply and caused delay and dragged the matter. Therefore, heavy cost may be imposed on the petitioner. He also submits that the interim maintenance order may be passed in favour of the respondent Nos. 1 and 2.

4. Heard learned counsel for the petitioner and learned counsel for the respondents.

5. It appears from the record that the trial court decided the maintenance application bearing Petition No. E-278 of 2016 on 06-08-2018. It appears from the judgment and order passed by the trial court in the absence of say and evidence of the petitioner. No evidence was led on behalf of the petitioner. Therefore, it can be

said that the order was passed without considering the evidence of petitioner. Therefore, the order passed by the trial court is required to be set aside.

6. It is submitted that the petitioner is paying the maintenance as per the order of trial court. Parties are not residing together since last 4-5 years. Therefore, the petitioner is required to make financial arrangement for respondents. It appears that he is gainfully employed. Therefore, there is no hindrance to pay the interim maintenance till the decision of the petition pending before the family court.

7. As the matter was not heard on merits, I pass the following order.

ORDER

- i. The judgment and order dated 06-08-2018 passed in Petition No. E-278 of 2016 by Family Court, Aurangabad is hereby set aside subject to costs of Rs. 5,000/- [Rupees Five Thousand] to the respondent No.1
- ii. The trial court is directed to allow the petitioner to file reply and hear the matter afresh.
- iii. During pendency of the said proceeding the

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petitioner is directed to pay the interim maintenance of Rs. 2,000/- to each the respondent Nos. 1 and 2 till final disposal of the main application.

iv. As the petition is filed in the year 2016, the trial court is directed to expedite the hearing of the said petition preferably, within the period of three months.

v. Rule made absolute.

[SURENDRA P. TAVADE, J.]

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