

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.12/2021****with****CIVIL APPLICATION No.2/2021**

SHRI PRAVIN VISHWANATH,
son of Damodaran, aged about
38 years, Private Service at Dubai,
through his duly Constituted Attorney
Smt. Sunita Vinod Vidhyadharan,
aged about 36 years, r/o C-301,
Umiya Quatro, Dabolim,
Mormugao, Goa.

... Petitioner

Versus

MRS. SUJATA H. SURVE
(wife of the petitioner), daughter of
Shri Surve Hanmanth Eknath,
Wadgaon br. Sr. No.65/2,
Singhagad Road,
PUNE – 411 041.

... Respondent

Mr. G. Vijaychandran, Advocate for the Petitioner.

Coram:- M.S. SONAK, J.

Date:- 22nd June 2021

ORAL ORDER:

Heard Mr. G. Vijaychandran for the Petitioner.

2. Though, the record indicates that the respondent wife is yet to be served in the matter, there is no necessity to wait for service to be completed. This is because even if the service were to be completed, it

is possible that the wife, who is taking care of the petitioner's child as well, may not be in a position to effectively defend these proceedings because the petitioner, despite orders from the competent court requiring him to pay maintenance to his wife and child has defaulted in making payments.

3. The challenge in this petition is to the order made by the Ld. Civil Judge, Senior Division at Vasco da Gama (Trial Judge) on 18.02.2020 holding that in case the petitioner fails to pay the arrears of maintenance granted by the competent court in Pune, the Matrimonial Petition No.26/2015/B instituted by the petitioner will stand dismissed.

4. Mr. Vijaychandran submits that earlier, the respondent wife, had filed a similar miscellaneous application by invoking the provisions of Order 39 Rule 11 of the Code of Civil Procedure but the same was dismissed by this Court by Order dated 18.06.2019. He submits that the learned Trial Court could not have thereafter entertained a similar application and made the impugned order because the principle of *res judicata* would apply.

5. Mr. Vijaychandran also submits that as against the order made by the Pune Court, the petitioner has already instituted an appeal which is accompanied by an application for condonation of delay. He

submits that merely because the proceedings are pending in the Appellate Court at Pune, the petitioner should not be made to pay maintenance amount to the respondent and his child.

6. According to me, in a situation of this nature, there is no question of invoking the principle of *res judicata*. The learned Trial Judge has considered the effect of her earlier order and has quite correctly concluded that the plea of *res judicata* will not come to the aid of the petitioner in the present fact situation. The learned Trial Judge has also quite correctly placed reliance on the decision of this Court in ***Rajesh Parikh v/s. Deepika Parikh in Writ Petition No.747/2021***, which has explained that in maintenance matters or for that matter in cases pertaining to matrimonial issues, normally, no hyper-technical approach should be adopted by the Court. Therefore, there is no merit in the contention based on the principle of *res judicata*.

7. The record reveals that the JMFC, Shivajinagar, Pune in Criminal Miscellaneous Application No.7178/2015 has directed the petitioner to pay maintenance to the respondent wife and his child of ₹8,000/- per month. The learned Trial Judge has noted that as on the date of making of the order dated 18.02.2020, the arrears had mounted up to almost ₹4,24,000/- and since the petitioner, failed to pay a single penny to his wife and child. Even Mr. Vijaychandran does

not dispute that no maintenance amount has been paid by the petitioner to the respondent wife and child. According to me, merely because an appeal may be pending that too, an appeal, which was instituted after the prescribed period of limitation, liability to pay maintenance seizes. In fact, it was the duty of the petitioner to pay the maintenance unless, the petitioner, had secured some interim relief from the Appellate Court. It is apparent that the petitioner wants to avoid payment of maintenance at any cost. In such circumstances, there was full justification for the learned Trial Judge to make the impugned order.

8. In any case, the petitioner, who does not bother to comply with the judicial orders does not deserve any relief in the exercise of extraordinary and equitable jurisdiction of this Court. The equitable jurisdiction is to promote justice and if justice is the by-product of even an erroneous order, it is not for this Court in the exercise of such discretionary jurisdiction to interfere. This is an additional ground for refusing to entertain the present petition.

9. Accordingly, this petition is dismissed with costs of ₹10,000/-.

10. The impugned order in this case was made on 18.02.2020. The order had required the petitioner to clear the arrears of maintenance within six weeks failing which the Matrimonial Petition No.26/2015/B

was to stand dismissed forthwith. This order was not stayed by this Court. Accordingly, the order has taken effect. The Matrimonial Petition No.26/2015/B therefore stands dismissed in terms of the impugned order.

11. The Registry, to send an authenticated copy of this Order to the Trial Court so that the Trial Court, can indicate that Matrimonial Petition No.26/2015/B now stands disposed of.

12. The civil application does not survive and is disposed of.

M. S. SONAK, J.