

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

WRIT PETITION NO.5435 OF 2021

Mrs. Shama Rahul Moholkar Petitioner
Vs.
Mr. Rahul Deorao Moholkar Respondent

WITH

INTERIM APPLICATION NO. 3251 OF 2021

Mr. Rahul Deorao Moholkar Applicant
Vs.
Mrs. Shama Rahul Moholkar Respondent

Mr. Abhijit D. Sarwate for Petitioner
Mr. Rahul D. Moholkar- Respondent in-person.

Coram : NITIN W. SAMBRE, J.
Date : 17TH NOVEMBER, 2021

P.C.:

1. On 16th September, 2021, this Court (Coram: Bharati Dangre, J.) has requested the Family Court to pass an order below Exhibit 135 on or before 4th October, 2021. In compliance thereof, on 1st October, 2021, the Family Court, Pune has passed an order thereby directing the Respondent-husband to clear the arrears as per orders of the High Court.

2. As far as the Petition is concerned, the order impugned is passed below Exhibit 1 and 354. Exhibit 354 is an application moved by the Respondent-husband seeking stay to the proceedings as he intended to approach the High Court questioning the order of Family Court. Vide common order dated 9th April, 2021 passed below Exhibit 1 and 354, the Family Court has permitted the Respondent/husband to participate in the proceedings and in case if he fails to clear the arrears, an adverse inference was to be drawn.

3. The fact remains that said order is not challenged by the Respondent-husband.

4. Vide order below Exhibit 135, dated 1st October, 2021 the Family Court has issued directions to the Respondent-husband to clear the arrears as per High Court order 16th September, 2021.

5. In the aforesaid background, in my opinion, the contention of Mr. Sarwate, learned counsel for the Petitioner that the earlier orders passed in exercise of powers under Order 39, Rule 11 (Bombay Amendment) of Code of Civil Procedure thereby refraining the Respondent/husband from participating in the proceedings has to be read against the Respondent appears to have some substance. To substantiate the aforesaid submissions, the undertaking given by the Respondent to this Court in paragraph 5 of the order dated 16th September, 2021, which reads thus :

“5. Respondent has undertaken that on his application being decided, if the impugned order dated 14th February 2017 is upheld, he shall deposit 50% of the arrears due and payable till 30th September, 2021 within a period of four weeks from 4th October, 2021.

6. During the hearing of this petition, the Respondent has shown his inability to clear the said amount of maintenance as was undertaken due to financial hardship.

7. In the aforesaid background, in my opinion, the present petition can be disposed of with following observations.

8. While dealing with the proceedings in which the order dated 1st December, 2021 passed by the Family Court below Exhibit 135, the Court shall be sensitive to the provisions of Order 39, Rule 11 of Code of Civil Procedure particularly keeping in mind the fact that the undertaking given to this Court referred above is also not honoured.

9. The petition as such stands disposed of.

10. As a consequence of disposal of the Writ Petition, Interim Application No.3251 of 2021 preferred by the Respondent no more survives. However, he is at liberty to take such steps as are available and permissible in law.

BHALCHANDRA
GOPAL
DUSANE

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BHALCHANDRA
GOPAL DUSANE
Date: 2021.11.20
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(NITIN W. SAMBRE, J.)