

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

WRIT PETITION NO.2307 OF 2021

Pradeep s/o Narayanrao Raut,
 Aged about 54 years,
 Occupation-Service,
 R/o. 5-A, Netaji Housing Society,
 Behind Narmada Colony, Katol Road,
 Nagpur.

.. Petitioner
 (Original Respondent)

.. Versus ..

Ku. Rutuja d/o Pradeep Raut,
 Aged about 21 years,
 Occupation-Education,
 representing through her mother
 Rajshree Wamanrao Dhote,
 Aged about 43 years,
 Occupation : LIC Agent and Lawyer,
 R/o. Plot No.40, Amba Nagar,
 Flat No.201, Sri Krishna Matti
 Apartment, Siddheshwar Nagar,
 Nagpur.

.. Respondent
 (Original Petitioner)

.....

Shri Sanket Bhalerao, Advocate for the petitioner,
 Respondent in person.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 09.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with
 the consent of the parties.

2. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner challenges order passed by the Principal Judge of Family Court, Nagpur below Exh.131 in Petition No. C-01/2015 thereby rejecting the prayer of the petitioner for issuance of witness summons.

3. The respondent-daughter, by filing Petition Petition C-01/2015 under Section 20 of the Hindu Adoption and Maintenance Act, 1956 claimed maintenance at the rate of Rs.25,000/- per month from the petitioner-father. During the course of recording of evidence, the petitioner filed applications for issuance of witness summons to the Information Officer, State Common Entrance Test Cell, Mumbai and to the Assistant Social Welfare Commissioner, District-Pune which were allowed on 24.1.2020 and 20.12.2019 respectively. In spite of issuance of witness summons, both of them did not appear. Therefore, the petitioner filed application Exh.131 seeking issuance of witness summons to the said two officers. This application was rejected. Hence, the present petition.

4. Heard the learned Advocate for the petitioner and the respondent Smt. Rajshree Wamanrao Dhote.

5. The learned Advocate for the petitioner strenuously urged that though the witness summons were issued to the said two witnesses, due to pandemic, they could not remain present before the Trial Court and, therefore, the Trial Court ought to have issued witness summons to the said two witnesses. The Trial Court has committed a serious error in rejecting the application Exh.131 and issuing witness summons to the witnesses, which amounts to denial fair opportunity to the petitioner. These witnesses are important for proving the petitioner's case. Hence, he submitted that the impugned order is liable to be quashed and set aside and the petition deserves to be allowed.

6. The respondent party in person, on the other hand, supported the impugned order by submitting that so far five witnesses are examined by the petitioner in support of his case. The maintenance proceeding was filed in the year 2015. By now the daughter has already completed her engineering course by securing first class with distinction. Therefore, examination of these witnesses is not necessary. She submitted that she has already filed all the relevant documents in respect of education expenses incurred by her for the respondent-daughter. The receipts of fees deposited by her are also placed on record before the Trial Court. Further submission is that the fees deposited are excluding the scholarship amounts and

the scholarship amounts are directly remitted by the government to the college and the same is not receivable by the respondent-daughter. She submits that only with a view to prolong the matter, that applications were filed by the petitioner. The matter is kept for judgment by the Trial Court. She, therefore, prays for dismissal of the petition.

7. Perusal of record indicates that the petition is filed in the year 2015 and in spite of laps of six years period, the maintenance proceeding is not decided. Admittedly, the respondent-daughter has also completed her engineering course by securing first class distinction. The examination of Information Officer is sought to prove that the daughter could have taken admission at Nagpur Engineering College. Since the daughter has already completed the Engineering Course, no useful purpose is going to be served by examining the said witness. Assistant Social Welfare Commissioner is called as witness to prove the scholarship amounts received by the respondent-daughter while studying at Pune. In view of the statement of the respondent that the fees deposited by her for the daughter's education are excluding the scholarship amounts and the scholarship amounts are directly remitted by the government to the college as the daughter has already completed education, so also since the parties have already filed affidavits in terms of the

directions of the Hon'ble Supreme Court in *Rajnesh .vs. Neha and others, (2021) 2 SCC 324*, there is no need to examine said witness. The Trial Court has, by a reasoned order, rejected the application and the said order needs no interference.

8. Since the trial is concluded and the matter is posted for judgment on 13.8.2021, this is not a fit case to exercise extraordinary writ jurisdiction. The petition is therefore **dismissed**. Rule is discharged. No costs.

(N.B. Suryawanshi, J.)