

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION (MCA) NO.20 OF 2020
IN
WRIT PETITION NO.5096 OF 2019

Sumit s/o Ramkishor Pande, Maskasath, Itwari, Nagpur

-vs-

Anita w/o Sumit Pande (Anita R. Tiwari), Sector 11, Khulsipar, Bhilai (CG)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri C. G. Barapatre, Advocate for applicant.
Smt Amruta Ghonge, Advocate for non-applicant.

CORAM : A. S. CHANDURKAR, J.

DATE : February 26, 2021

By the judgment dated 20/11/2019 in Writ Petition No.5096/2019 which was filed by the non-applicant herein the present applicant was directed to pay interim maintenance at the rate of Rs.3000/- per month. The applicant has sought review of this order on two counts namely, that the learned counsel for the applicant-respondent in the writ petition was not heard when the said order was passed and secondly in view of the fact that in proceedings under Section 125 of the Code of Criminal Procedure, 1973 (for short, the Code) the non-applicant was getting an amount of Rs.2000/- as maintenance, she was not entitled to seek further maintenance from the Family Court.

2. The learned counsel for the applicant by placing reliance on the decisions in *Ravindra Haribhau Karmarkar vs Shaila Ravindra Karmarkar and anr. 1992 (1) Mah L.R 246* submits that prosecution of two parallel proceedings for grant of maintenance were not permissible and the non-applicant having been granted amount of Rs.2000/- per month as maintenance in proceedings under Section 125 of the Code, the Family Court had rightly refused to grant any maintenance under Section 24 of the Hindu Marriage Act, 1955. It was not permissible for the non-applicant to prosecute two simultaneous proceedings at the same time. Further though the applicant had engaged an Advocate to represent him the said Advocate failed to appear and represent the applicant in the writ petition. On these counts it is submitted that the judgment dated 20/11/2019 deserves to be reviewed.

3. The learned counsel for the non-applicant by referring to the decisions in *Gomaji Ghanshyam Mohadikar vs. Yashoda w/o Gomaji Mohadikar 1996 (1) Mh.L.J. 423* and *Alka w/o Vardhaman Bamb vs Vardhaman alias Pushkaraj alias Narendra s/o Nemichand Bamb 2000 (3) Mh.L.J. 512* submits that merely because some amount of maintenance was granted in proceedings under

Section 125 of the Code, the same would not be a bar to seek maintenance under Section 24 of the Act of 1955. She further submits that after noticing the order passed under Section 125 of the Code the direction to pay interim maintenance at the rate of Rs.3000/- per month has been issued. There is no error apparent on the face of the record and hence the application is liable to be rejected.

4. Perusal of the order dated 20/11/2019 passed in Writ Petition No.5096/2019 indicates that on 04/11/2019 when the writ petition was considered for admission there was no representation on the part of the applicant herein. The proceedings were then adjourned to 20/11/2019 and as on that date also there was no representation on behalf of the applicant, the Court proceeded further with its adjudication. As sufficient opportunity was granted to the applicant there is no reason to re-open the proceedings on the first ground urged by the applicant.

5. The order passed in the writ petition indicates that the fact that an amount of Rs.2000/- per month was granted to the non-applicant in proceedings under Section 125 of the Code

was noted and thereafter the non-applicant was found entitled to grant of interim maintenance at the rate of Rs.3000/- per month. There is no bar for an applicant to seek maintenance under any of the enactments that permit the award of maintenance. This is clear from the recent decision of the Honourable Supreme Court in ***Rajnish vs. Neha and anr. AIR 2021 SC 569***. In paragraph 17 it has been observed as under :

“ 17. ... It is well-settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D. V. Act and Section 125 of the Cr. P. C. or under H. M. Act. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceedings, she is under a legal obligation to disclose the same in a subsequent proceedings for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceedings, the civil Court/family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceedings, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceedings, and grant an adjustment or set-off of

the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned Court in the previous proceeding. ”

In the light of this settled position, even the second ground urged by the applicant has no merit.

6. I therefore do not find any error apparent on the face of the record to exercise review jurisdiction. The application accordingly stands dismissed.

Asmita
Bhandakkar

Digitally signed by
Asmita Bhandakkar
Date: 2021.02.26
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JUDGE