

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

928 CRIMINAL REVISION APPLICATION NO.45 OF 2022

SHAIKH RAJU SHAH S/O. RAJJAK SHAH
VERSUS
ASIYA BEGUM W/O. SHAIKH RAJU SHAH

...
Advocate for Applicant : Mr. Shaikh Kayyum Najir
Advocate for Respondent : Mr. I.G. Durrani
...

CORAM : S. G. MEHARE, J.
DATE : JULY 15, 2022

PER COURT :

1. Heard the learned Counsel for the applicant and the learned Counsel for the respondent.
2. A short point raised in this case is that due to the improper advice the applicant did not appear before the Family Court and, therefore, the impugned order is passed *ex parte*.
3. It has been also argued by the learned Counsel for the applicant that the maintenance granted by the learned Judge, Family Court, Aurangabad is exorbitant. The applicant has no income as alleged by the respondent in the application.
4. The learned Counsel for the respondent has vehemently opposed the application contending that the applicant has five tractors

and a handsome income. Notice was duly served upon the applicant, but he did not appear before the Family Court. Hence, the matter was correctly proceeded *ex-parte* against him. Monthly maintenance awarded by the learned Family Court is just and proper. Respondent has no source of income. Hence, the application may be rejected.

5. A short point before the Court is that whether an opportunity to contest the petition on merit may be granted to the applicant or not? It is not in dispute that summons of the proceeding was served upon the applicant, but he did not appear. Therefore, the Court proceeded *ex parte* against him. The explanation put forth by the applicant appears probable. Hence, an opportunity to contest the matter on merit should be granted to him.

6. In view of the facts in the case and considering the quantum granted by the learned Judge, Family Court, this Court is of the view that an opportunity may be granted to the applicant to contest the petition on the condition that he should continue to pay the amount of maintenance to the respondent as granted by the learned Judge, Family Court till the conclusion of the petition afresh. On the above condition, the petition is allowed.

7. The impugned order passed by the learned Judge, Family Court, Aurangabad in Petition No. E-30/2021 dated 27.10.2021 is set aside.

8. Both parties to appear before the learned Judge, Family Court at Aurangabad on **03.08.2022**.

9. The opportunity of being heard be granted to the applicant in the petition and the learned Judge, Family Court, Aurangabad shall decide the matter on merits at the earliest.

10. No order as to costs.

[S. G. MEHARE]
JUDGE