

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

WRIT PETITION NO.6126 OF 2021

RAHUL SUBHASH SHINDE
VERSUS
SUPRIYA RAHUL SHINDE

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Mr. D. G. Nagode, Advocate for the Petitioner.

Mr. Rahul R. Karpe, Advocate for Respondent.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 06th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner challenges the order dated 27.11.2019 passed by the 4th Joint Civil Judge, Senior Division, Ahmednagar on application at Exhibit-34 thereby directing the attachment of salary of petitioner for Rs.14,596/- on account of failure to comply with the judgment and decree dated 27.01.2015 for restitution of conjugal rights.

2. The learned counsel appearing for petitioner would submit that petitioner is already paying maintenance of Rs.2500/- under Section 125 of the Code of Criminal Procedure, 1973. He was also directed to pay maintenance of Rs.7500/- per month under Domestic Violence Act. He would, therefore, submit that the Trial Court ought to have taken into consideration the amount of Rs.7500/- + Rs.2500/- (totaling Rs.10,000/-) and deducted the same from the salary of petitioner with a view to apply the provisions of Clause I of sub-Section 1 of Section 60 of the Code of Civil Procedure. The next contention of the learned counsel for petitioner is that respondent failed to disclose the fact of receipt of

maintenance under the Code of Criminal Procedure and Domestic Violence Act in her application for execution. He also relied upon the judgment of the Apex Court in **Rajnesh Vs. Neha and Another, (2021) 2 SCC 324**.

3. Both the submissions made by the learned counsel for petitioner deserve outright rejection. So far as first submission is concerned, there is nothing in the provisions of Section 60 of Code of Civil Procedure under which the amount of maintenance being paid by husband to the wife is required to be excluded from the total salary for the purpose of arriving at the figure of maximum salary which can be attached. Something which is not provided in the statute cannot be read in to the same. Therefore, the first contention of petitioner deserves rejection.

4. So far as the second contention of petitioner is concerned, the same is equally misplaced. The judgment in **Rajnesh Vs. Neha and Another** (supra) is applicable to a situation where two proceedings are pending for maintenance and there is requirement of taking into consideration the amount of maintenance already granted under one provision for the purpose of considering the claim for maintenance in pursuance of another provision. The judgment in my view has no application to the present case, as the Executing Court is concerned with the decree for restitution of conjugal rights. It has not determined the entitlement of the wife to any particular amount towards maintenance. The judgment, therefore, has no application.

5. The conduct of petitioner is also required to be borne in mind. In execution proceedings, the Executing Court has

passed order dated 30.09.2016 attaching petitioner's flat, despite which petitioner has sold the said flat on 29.05.2017 by breaching the order of attachment.

6. Resultantly there is absolutely no error committed by the Executing Court in passing the impugned order. There is absolutely no merit in the present petition and the same deserves to be dismissed and is dismissed without any orders as to cost.

(SANDEEP V. MARNE)
JUDGE