

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO.5712 OF 2022

RAJU PRALHAD KHILARI
VERSUS
JYOTI RAJU KHILLARI ALIAS JYOTI RAJARAM KALE

...
Advocate for Petitioner : Mr. Tapse Patil Pradeep V.
...

CORAM : MANGESH S. PATIL, J.

DATE : 1 JULY 2022

PC :

The petitioner is husband of the respondent. In the Hindu Marriage Petition preferred by him, he was called upon to pay some interim *alimony*. On his failure to do so, the respondent - wife preferred an application (Exhibit - 30) soliciting order under Order XXXIX Rule 11(1) of the Code of Civil Procedure for its non-compliance.

2. By the order under challenge in this writ petition, the trial court has allowed her application and dismissed the petition by resorting to that provision.

3. In view of the availability of a remedy contained in Order XXXIX Rule 11(2) of the Code of Civil Procedure, a party whose petition is dismissed by resorting to clause (1) thereof, is entitled to move the same court and show sufficient cause and seek restoration of the proceeding. The petitioner does not seem to have availed of such a remedy.

4. Petition is dismissed with liberty to the petitioner to make necessary application before the same court under Order XXXIX Rule 11(2) of the Code of Civil Procedure. The time spent here may be considered under section 14 of the Limitation Act, 1963.

[MANGESH S. PATIL]
JUDGE

arp/