

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

944 CRIMINAL WRIT PETITION NO.864 OF 2016

Rajkumar S/o. Ramnath Navandar, **...PETITIONER**
Age-58 years, Occu-Nil,
R/o. Disha Karishma Apartment,
Angooribagh, Aurangabad

VERSUS

1. Jaimala W/o. Rajkumar Navandar, **...RESPONDENTS**
Age-40 years, Occu-Household
R/o. C/o. Kanhyalal Ramprasad Tapadiya,
New Mondha, Partur, Dist. Jalna
2. Raghunanda S/o. Rajkumar Navandar,
Age-18 years, Occu- Student,
R/o. C/o. Kanhyalal Ramprasad Tapdiya,
New Mondha, Partur, Dist. Jalna

Mr. Navin S. Shah, Advocate a/w Mr. S. V. Natu, Advocate for
the petitioner
Mr. Shrikant Kulkarni, Advocate for the respondent Nos. 1 and 2

CORAM : KISHORE C. SANT, J.

DATE : 09th DECEMBER, 2022

JUDGMENT

1. Rule.
2. Rule made returnable forthwith with the consent of
the parties.

3. By way of this petition, the petitioner has challenged the order dated 31-03-2016 passed by the learned Judge, Family Court, Aurangabad thereby directing the petitioner to pay Rs.4,000/- per month to respondent No.1 and Rs.2,000/- per month to respondent No. 2 who are applicant Nos. 1 and 2 respectively before the family court. The order is challenged mainly on the count that it is ex-parte. No opportunity was given to the petitioner-husband to participate in the proceeding. He could not appear before the court because of his illness. Learned advocate for the petitioner further submits the main ground is that the court while passing the judgment has not applied its mind independently but has adopted reasoning which was already given in the judgment and order in petition No. E-130 of 2011 dated 22-06-2012. The order dated 22-06-2012 i.e. first order was also ex-parte order and the same was challenged before this court by filing Criminal Revision Application No. 32/2013 and the proceeding was remanded back with a direction to give an opportunity to the petitioner to participate

in the proceeding and the petitioner therein was directed to pay an amount of Rs.50,000/- towards part payment of the arrears of the maintenance.

4. It is the submission of the learned advocate for the petitioner that after remand it was necessary to offer sufficient opportunity to the petitioner to lead the evidence in the proceeding. The impugned order deserves to be quashed and set aside on this count.

5. Learned advocate for the respondents submits that it is only an attempt to deliberately prolong the proceeding by the petitioner. He submits that after remanding the matter, sufficient opportunity was given to the petitioner and in spite of that he has not availed the said opportunity. The trial court was again constrained to pass ex-parte order. Therefore, the learned advocate for the respondent prays for rejection of the petition.

6. On going through the impugned judgment and order

it is seen that after remand of the matter, the parties were again referred for counseling to the Marriage Counselor. However, no settlement could be arrived at. Para 2 shows that petitioner had appeared by filing vakalatnama on 08-10-2015 after seeking permission. It was informed that the petitioner suffered fracture and was physically unfit and therefore, he was not in a position to appear before the court. The medical certificate was produced to show that the petitioner was advised to take rest for a period of three months from 18-08-2015. Thus, it was only till November, 2015 the petitioner was advised to take rest. It is specifically observed that even thereafter neither the petitioner nor his lawyer remained present before the court. Still in the interest of justice on 31-12-2015 application for adjournment Exh. 54 was allowed subject to cost. However, even thereafter the petitioner did not pay the cost and again neither the advocate nor the petitioner remained present thereafter and the matter was again proceeded without say. Respondent wife filed pursis that she does not want to lead any further evidence as already evidence was recorded earlier in the proceeding. It is in

this view of the fact that the learned family Court has confirmed the earlier order and adopted the reasoning already given in the judgment dated 22-06-2012 and did not discuss, nor record any reasons afresh showing that he has independently considered the matter and has come to his conclusion.

7. Learned advocate for the petitioner relied upon the judgment reported in (2019) 5 SCC 744 in the case of Kushuma Devi Vs Sheopati Devi (dead) and others. It is held by the Hon'ble Apex Court in para 8 as under:

8. *This court has consistently laid down that every judicial or/ and quasi-judicial order passed by the court/tribunal/authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellant/revisionary court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the court/tribunal/ authority for reaching to such conclusion (see State of Maharashtra V Vitthal Rao Pritirao Chawan, Jawahar Lal Singh V Naresh Singh, State of U P V Battan, Raj Kishore Jha V State of Bihar and State of Orissa V Dhaniram Luhar).*

8. He further relied upon another judgment reported in

2018 (5) Mh. L. J. at 780 in the case of Bajrang Manohar Sonvane and others Vs State of Maharashtra and others. It is held by this court in the said case that there is an implicit requirement of observance of the principles of natural justice that the order or decision must be expressed in such a manner that reasons can be spelt out from such decision. The unreasoned order or the order passed without recording reasons amounts to violation of principles of natural justice. It also amounts to arbitrary exercise of power vested in the authority. In the said case the order of Hon'ble Minister was set aside.

9. There cannot be any dispute with the proposition laid down in both the cases. In the present case it is seen that the present petitioner did not participate in the proceeding before the family court and the family court has passed the order directing to pay maintenance. The order was already set aside and matter was remanded by this court by entertaining the criminal revision application filed by the petitioner. As already discussed, it is clearly seen that the petitioner even thereafter

has not taken proper care to participate in the proceeding rather as appearing that he is deliberately avoiding to participate in the proceeding on one or the other pretext. It is clear from the conduct that he does not deserve any indulgence from this court while exercising jurisdiction under Article 227 of the Constitution or under Section 482 of the Code of Criminal Procedure.

10. It is reported that as of now arrears are in the tune of Rs.6,11,000/-. As per the advocate for the petitioner it is Rs.4,75,000/- This court need not go in exact amount of arrears. It is clear that the petitioner is not paying maintenance to the wife regularly. It is clear attempt only to avoid the payment of the amount of maintenance. The petition is thus devoid of merits. No case is made out. Therefore, the criminal writ petition is disposed off. Rule is therefore, discharged.

[KISHORE C. SANT, J.]