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

**CRIMINAL REVISION APPLICATION NO.178 OF 2022
WITH APPLN/3201/2022 IN REVN/178/2022**

**ROHIDAS DIPAK KURHADE
VERSUS
AARTI ROHIDAS KURHADE @ AARTI DAULAT SHINDE**

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Advocate for Applicant : Ms. Surekha Chincholkar h/f Mr. Chincholkar
Ganpat Niranjana

Advocate for Respondent : Mr. Vikrant P. Rajee

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CORAM : S.G. MEHARE, J.

DATED : 14th NOVEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned counsel for the respondent.
2. The applicant/husband has challenged the order granting maintenance to the respondent/wife dated 22.11.2021 passed by the learned Judge, Family Court, Dhule in Petition E-2/2021.
3. The applicant/husband has challenged the impugned order on the sole ground that the notice of the petition was not served upon him. The learned Judge, erroneously held, the notice/summons was properly served.
4. The counsel appearing for the applicant would submit that at the relevant time when the notices were issued to the applicant by the Court, he was residing at Village Kotul, Taluka Akole, District Ahmednagar. The respondent was well aware that the

applicant was not residing on the address given by her. Since the applicant was not residing on the address given by the respondent, nobody was there to receive the notice on his behalf. The learned Judge has incorrectly believed the postal endorsement on the envelope contain the summons. Unless the notice is sent on the correct address, the postal endorsement cannot be believed. Hence, the Judge has committed an error of law in believing that the applicant has refused to accept the summons/ notice. The learned Judge has incorrectly proceeded ex-parte against the non-applicant and passed the impugned order. The counsel appearing for the applicant would argue that the applicant has a good case on merit. Hence, opportunity needs to be granted to him to contest the petition.

5. In reply, learned counsel appearing for the respondent would submit that, the respondent gave the correct address where the applicant was residing and the notice was duly served. He was well aware of the proceeding. However, he deliberately avoided the appearance. The applicant had deposited half the amount of maintenance granted by the learned Judge. The applicant is regularly depositing Rs.5,000/- per month as per the directions of this Court.

6. Perused the papers. It reveals that when the petition was filed, the address of the Shrirampur was given. The notice was addressed on the said address, but it was not served. Hence, the notice by post with acknowledgement was sent. The registered post

notice was returned with endorsement 'unclaimed'. Hence, the learned Judge hold it a good service and proceeded ex-parte. Section 27 of the General Clauses Act, gives rise to the presumption that service of notice has been effected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice by post is deemed to have been effected at the time at the which the letter would have been delivered in the ordinary course of business. The presumption under Section 27 of the General Clauses Act, is rebuttable presumption. To rebut the presumption, the applicant has a case that at the relevant time he was not residing the address where the notice/summons was sent. At that time he was serving in the bank at village Kotul, Tq. Akole. To strengthen his case he would submit that, the respondent was well aware that he was not residing on the said address. Hence in the recovery proceeding, she also gave the address of the place of his service. Soon after the service of the notice on the place of his service, he appeared in the recovery proceeding. The respondent has no strong evidence, that the applicant was there where the notice of maintenance application was sent. In view of this face, there appears substance in the argument of the learned counsel for the applicant that at the relevant time, he was not residing on the said address. Therefore, there was no question to respond to the Court's notice. The notice was issued on the incorrect address. Hence, it cannot be

presumed that the notice was duly served upon the applicant. It appears that the applicant had no intention to avoid the proceeding and harass the respondent/wife. Hence, an opportunity needs to be granted to him to contest the original petition for maintenance. No prejudice would be caused to the respondent/wife if the case is remitted to the Court, as she is already getting the maintenance of Rs.5,000/-. The applicant is serving in a bank. He is able to pay Rs.5,000/- per month till the disposal of the petition on merit.

7. In view of the above observations, the revision is liable to be allowed. Hence, the following order :

ORDER

- I) The Criminal Revision Application is allowed.
- II) The order passed by the learned Judge, Family Court at Dhule in Petition E-2/2021 dated 22.11.2021 is quashed and set aside.
- III) The case is remitted to the Family Court at Dhule for disposal on merit by granting an opportunity to the applicant to file written statement, lead the evidence, cross examine the witnesses and contest the case on merit.
- IV) The applicant shall continue to pay Rs.5,000/- per month till the disposal of the case on merit as interim maintenance.
- V) Criminal Application No.3201 of 2022 for withdrawal is allowed.

VI) The respondent/wife is entitled to receive the amount of Rs.1,27,000/- deposited by the applicant. It will be adjusted after determining the quantum by the Judge Family Court at Dhule on merit.

VII) Both parties are directed to appear before the Family Court at Dhule on 03.12.2022.

VIII) No order as to costs.

IX) Record and proceedings be returned to the Family Court, Dhule.

(S.G. MEHARE, J.)

Mujaheed//