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

**CRIMINAL REVISION APPLICATION NO.117 OF 2021
WITH APPLN/4009/2022 IN REVN/117/2021**

**CHANDRAKANT KARBHARI PALVE
VERSUS
VANDANA CHANDRAKANT PALVE AND ANOTHER**

...
Advocate for Applicants : Mr. Gaurav L Deshpande
Advocate for Respondents : Mr. Shinde Ram S.

...

CORAM : S.G. MEHARE, J.

DATED : 06th DECEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned counsel for respondents.
2. Learned counsel for the applicant vehemently argued that the lockdown restrained the applicant from approaching the Court for cross-examination of the respondent. He did not deliberately avoid the proceeding. The applicant has a good case on merit. At the relevant time, the respondent/wife had a sufficient income. Since the applicant could not lead the evidence and produce the documents, the learned Judge proceeded to exparte, and believed the case of the respondents. If the opportunity is granted to him to contest the case on merit, he may prove his case, and there shall be a proper adjudication of the dispute.

3. Learned counsel for the respondents opposed the application contending that there was no reason for the applicant to remain absent. He was attending other proceedings during the said period and the respondent/wife had no sufficient income at the relevant time.

4. It is not in dispute that the order impugned before this Court is *exparte*. The opportunity of being heard on merit should normally be given. The applicant has deposited 25% of the arrears and regularly pays 50% of the maintenance determined by the learned Judge. The applicant has no dispute about the maintenance granted to the child.

5. The reason assigned for his absence before the trial court was probable and possible. In view of that matter, if an opportunity would be granted subject to costs for which the applicant agreed, the dispute would be adjudicated on merit. The Court is satisfied with the reasons for his absence in the proceeding. Hence, the *exparte* order may be set aside and the case may be remitted to the trial Court for disposal afresh. Hence, the following order :

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The impugned order passed by the learned Judge Family Court, Ahmednagar, in Petition E-11 of 2019 dated 31.03.2021, stands set aside.

(3)

(iii) The case is remitted to the Family Court, Ahmednagar, for disposal afresh by giving an opportunity to both the parties to lead evidence afresh, if any, subject to the costs of Rs. 50,000/- (fifty thousand) and on the condition to continue to pay 50% of the amount determined by the Court towards maintenance till final disposal of the revision petition.

(iv) The applicant shall pay the cost of Rs.50,000/- to the respondents as a condition precedent before the Family Court, Ahmednagar.

(v) Criminal Application No.4009 of 2022 stands disposed of.

(S.G. MEHARE, J.)

Mujaheed//