

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14212 OF 2017

SAMBHAJI GENBA WAGHMARE
VERSUS
GAYABAI SAMBHAJI WAGHMARE

...

Advocate for Petitioner : Mr. Ganesh L Kedar

Advocate for Respondent : Mr. S.J. Salunke

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by learned District Judge-4, Beed, in Miscellaneous Civil Application No. 527/2015 thereby rejecting the application filed by the petitioner for extension of time to deposit amount of cost of Rs. 2500/-.

2. Respondent/wife filed Regular Civil Suit No. 248/2012, claiming maintenance against the petitioner/husband. The Trial Court decreed the suit on 11.09.2013, thereby directing the husband to pay monthly maintenance of Rs. 10,000/- to the wife.

3. The petitioner challenged the Trial Court's judgment and decree by filing appeal along with Miscellaneous Civil Application No. 111/2014 for condonation of delay. By order dated 09.02.2015, delay was condoned, subject to the petitioner paying cost of Rs. 2500/-, within one month from the date of order.

4. The petitioner failed to pay cost. Hence, the petitioner preferred Miscellaneous Civil Application No. 527/2015 on 01.08.2015, under section 151 of CPC, praying for extension of time to deposit cost and seeking condonation of delay contending that he was suffering from paralytic stroke and hence, was unable to deposit cost within stipulated time. Rejection of this application is challenged in this petition.

5. I have given due consideration to the rival submissions advanced by the learned advocate for the petitioner and learned advocate for the respondent. Perused the grounds raised in the writ petition, documents placed on record so also the impugned order.

6. The petitioner is retired as Deputy Engineer from Public Works Department. He is getting handsome pension. According to the respondent/wife apart from pension he has other sources of income. On a query, learned advocate for the petitioner submitted that though the Trial Court by order dated 11.09.2013 granted maintenance of Rs. 10,000/- per month to the wife, till date no maintenance is paid by the petitioner/husband.

7. In the facts of the present case, this Court is of the opinion that the impugned order is liable to be set aside on certain conditions, so as to give reasonable and fair opportunity to the husband to contest his appeal on merit. In the result following order:

ORDER

- I) The writ petition is allowed.
- II) The impugned order dated 07.11.2017 passed by District Judge-4, Beed in Miscellaneous Civil Application No. 527/2015 is hereby quashed and set aside.
- III) Miscellaneous Civil Application No. 527/2015 is allowed, subject to the Petitioner depositing

50% amount of arrears of maintenance in the Appellate Court within a period of 12 weeks from today. On such deposit, respondent/wife shall be entitled to withdraw the said amount.

- IV) Cost of Rs. 2500/- to be deposited by the petitioner within a period of four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]