

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3075 OF 2021

Rajkumar Ganesh Sharma

..Petitioner/s

v/s.

Seeta Umesh Sharma & Anr.

..Respondents

Mr. Abhay Anturkar i/b. Vaibhav Kulkarni for the Petitioner/s.
Mr. Shashipal Shankar a/w. Vivek Agarwal for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 19th AUGUST, 2022.**

P.C.

1. This writ petition has been filed for quashing the order dated 28.04.2021 passed by the learned Judge dismissing the application filed by the petitioner for recall of the order dated 28.01.2021 of sealing shop no.461.

2. The Petitioner is the father / father in law of Respondent No.2 and Respondent No.1 respectively. It is stated that the Respondent No.2 has filed Divorce Petition NO. 692 of 2014, which is pending before the Civil Court, Vadgaon. The Respondent No.1-wife had filed an application in Marriage Petition No. 692 of 2014 seeking interim maintenance of Rs.25,000/- per month. By order dated 3.1.2018 the Trial Court partly allowed the application and directed Respondent No.2-husband to pay to the Respondent no.1 interim maintenance of

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Rs.15,000/- per month from the date of the application till disposal of the petition. The petition filed by the Respondent No.2 challenging the order of interim maintenance was dismissed by this Court for having failed to abide by an undertaking that he would deposit 25% of the compensation. The Respondent No.1 wife thereafter filed an application to sealed the shops owned by the Petitioner herein. By order dated 28.01.2021 the said shops have been sealed.

3. The Petitioner filed an application for recall of the said order dated 28.01.2021 mainly on the ground that the said shops are owned by him. , the same being his self acquired property, neither the Respondent No.1, nor Respondent No.2 has any right to the said shops. The Petitioner further claimed that after the marriage, Respondent Nos.1 and 2 were residing separately at Malavalli. The Petitioner claims that he was deriving income from the said shops, which was his only source of income.

4. Learned Judge dismissed the application filed by the Petitioner solely on the ground that the Respondent No.2 husband had claimed that he had no independent source of income and that he was dependant on his father. Learned Judge has further observed that the Respondent No.2 has not paid the maintenance despite opportunity given, and that neither Respondent No.2, nor the Petitioner has shown willingness to pay the arrears of maintenance of Rs.12,50,000/-.

It is not in dispute that the shops which are sealed is the self acquired

property of the Petitioner. There is nothing on record to show that Respondent No.2 has any right, title or interest in the said shops or that the said shops were purchased from the joint family income, as alleged by the learned Counsel for the Respondent No.1. Hence, Respondent No.1- the daughter-in-law cannot as of right claim maintenance or seek to recover maintenance from her father-in-law.

5. In *Rajnesh (supra)* the Honourable Supreme Court has held that :

“125. The order of decree of maintenance can be enforced as a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Section 51, 55, 58, 60 read with Order 21.

126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, an minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court.”

6. In the instant case, as noted above, the Respondent No.1 wife has sought to recover the arrears of maintenance by sale of shops, which are not owned by the Respondent No.2, but are exclusively owned by the Petitioner. The Petitioner and his wife, who are senior citizens cannot be made liable to clear the arrears of maintenance and they cannot be deprived of their source of livelihood by sealing, attaching or selling

their self acquired property.

7. Hence the application could not have been dismissed on the ground that the Petitioner has not shown willingness to clear the arrears. The impugned order is perverse and contrary to the principles laid down by the Apex Court, and hence the same cannot be sustained. Hence the impugned order is quashed and set aside.

8. Upon instructions, learned Counsel for the Petitioner states that the amount of Rs.15,000/- deposited by the Petitioner towards costs be paid to the Respondent No.1.

(ANUJA PRABHUDESSAI, J.)