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

WRIT PETITION NO. 6923 OF 2022

Dr. Mahendra Bhivsan Chavan ..Petitioner

vs.

Dr. Nilima Mahendra Chavan ..Respondent

Ms. Sabina Ansari a/w. Ms. Aisha Shaikh i/b. Mulyalkar &
Associates Law Firms for the petitioner.

Mr. Vivek Joshi i/b. Mr. Vikas Shivarkar for respondent.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 7, 2022.

P.C. :

1. The challenge in this petition filed by the petitioner – husband is to an order dated February 24, 2022 passed below Exhibit 11 in Marriage Petition No. 164 of 2022 (Old Marriage Petition No. 597 of 2020).

2. Without narrating the detailed facts, suffice it to observe that as a result of matrimonial dispute between the parties, an application (Exhibit 11) was made under Section 24 of the Hindu Marriage Act, 1955 before the Civil Judge, Senior Division at Pune by the respondent – wife.

3. The petitioner – husband filed the petition for divorce. An application (Exhibit 11) was filed for maintenance which was heard by the Civil Judge, Senior Division, Pune.

4. Sometime in the month of February, 2022, the

proceedings were transferred from the Civil Judge, Senior Division, Pune to the Court of Civil Judge, Senior Division, Wadgaon Maval, Pune. It is the submission of learned counsel for the petitioner – husband that he was not aware of the said transfer, as even learned counsel appearing on behalf of the petitioner – husband failed to intimate about the said fact of transfer. It is for this reason that he could not appear and contest the application (Exhibit 11) which was decided by the order impugned in this petition. Learned counsel for the petitioner – husband submits that it was only as a result of some communication gap that the petitioner could not be represented when the application (Exhibit 11) was filed. The application was decided in his absence.

5. Learned counsel for the respondent – wife opposed the petition. It is submitted that the petitioner – husband is in arrears to the tune of more than Rs. 5 lakh and it is only with a view to avoid the consequence of payment of arrears that such a plea is taken up.

6. I had asked learned counsel for the petitioner – husband whether the petitioner – husband is willing to deposit the arrears in terms of the impugned order. Learned counsel submitted that the petitioner – husband as well as the respondent – wife are doctors by profession. It is her submission that though the hospital was constructed from the funds of the petitioner – husband, presently it is the respondent – wife who is looking after the hospital and the

petitioner – husband is not in a position to run the hospital as a result of the restraint order passed by the Court. He is only allowed to use O.P.D. as a result of which he is hardly earning anything.

7. Nonetheless, on instructions, learned counsel for the petitioner – husband submitted that the petitioner – husband is willing to deposit a sum of Rs. 3 lakh with the Civil Judge, Senior Division, Wadgaon Maval, Pune, within a period of four (4) weeks from today, but requests that he may be given an opportunity to contest the application (Exhibit 11).

8. Considering the peculiar circumstances of the case and the fact that the petitioner – husband is willing to deposit Rs.3 lakh within a period of four (4) weeks from today with the Civil Judge, Senior Division, Wadgaon Maval, Pune, I am inclined to set aside the order dated February 24, 2022 as the petitioner – husband was not heard. In the interest of justice, an opportunity needs to be given to the petitioner – husband to contest the application (Exhibit 11) in view of the transfer of the proceedings from the Civil Judge, Senior Division, Pune to the Court of Civil Judge, Senior Division, Wadgaon Maval, Pune. From the roznama, it appears that on the date of the transfer itself, the application came to be decided as is the submission of learned counsel for the petitioner – husband.

9. Consequently, the petition is allowed.

10. The impugned order dated February 24, 2022 is set aside.

11. Parties to appear before the Civil Judge, Senior Division, Wadgaon Maval, Pune, on September 19, 2022 along with the copy of this order.

12. The amount of Rs.3 lakh to be deposited with the Civil Judge, Senior Division, Wadgaon Maval, Pune, within a period of four (4) weeks from today by the petitioner – husband which shall abide by the result of the order passed below Exhibit 11.

13. The application (Exhibit 11) to be decided within a period of four (4) weeks from the deposit made by the petitioner – husband. In case the amount is not deposited, the impugned order shall stand revived.

14. The writ petition is accordingly disposed of.

(M.S.KARNIK, J.)