

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2451 OF 2021

Harish @ Roshan s/o Bhaskar Karnewar
age 42 years, occ. Service R/o 37 Munje
Baba Layout, Ambazari, Near Bada Gan-
pati, Nagpur 440033

.... **PETITIONER**

// **VERSUS** //

Leelavati @ Reena w/o Roshan Karnewar
age 36 year, Occ. Household, R/o C/o
Shankar Katrapwar, Golcha Marg, Near
Karachi Stores, Nagpur 440001

.... **RESPONDENT**

Shri V.N. Mate, Advocate for the petitioner.
Mrs. J. Dharmadhikari, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 08/02/2022.

ORAL JUDGMENT :

Hearing was conducted through Video Conferencing.

2. Heard. **Rule.** With Consent, the petition is heard finally.

3. The petitioner is assailing the order dated 16.01.2021 rendered by the Principal Judge, Family Court, Nagpur in R.D. Petition 142 of 2019 below Exhibit 11, whereby the learned Judge issued warrant for attachment of salary to the extent of Rs.20,000/- per month towards the recovery of the

arrears of maintenance.

4. Broad facts are thus :

5. The petitioner filed petition A-562 of 2013 against the respondent Smt. Leelavati seeking decree of dissolution of marriage and Smt. Leelavati preferred petition A-697 of 2013 seeking Restitution of Conjugal Rights.

6. The petitions are decided by common judgment dated 02.12.2016. While the petition preferred by the husband seeking decree of dissolution of marriage is dismissed, the petition seeking Restitution of Conjugal Rights is allowed in favour of the wife. The operative part of the common judgment dated 02.12.2016 reads thus :

“ORDER

1] Petition No. A-562/13 is dismissed.

2] Petition No. A-697/2013 is decreed.

3] The petitioner to allow the respondent to join his company within 15 days from the date of this order.

4] In default of restitution Petitioner is Petition No.A 562/2013 i.e. respondent in petition No A-697/2013 i.e. husband Harish @ Roshan S/o. Bhaskar Karnewar to pay maintenance to @ Rs.10,000/- P.M. to the respondent Sau. Lilawati @ Reena Roshan Karnewar in petition No. A 562/2013 & the petitioner in Petition No.A 697/2013 and Rs.5,000/- P.M. to the daughter Chetna from 1.12.2016 till restitution resumes.

5] The maintenance of the minor daughter Chetna shall be payable to her natural guardian mother i.e. Lilawati @ Reena.

6] Parties to bear their respective costs in both petitions.”

7. The husband challenged the common judgment by preferring

two separate appeals. Family Court Appeal 19 of 2017 is preferred challenging the dismissal of the petition seeking dissolution of marriage and Family Court Appeal 25 of 2017 is preferred challenging the decree of Restitution of Conjugal Rights in favour of the wife.

8. It is common ground that both the appeals are admitted for final hearing. It would be necessary to note the order of the Division Bench rendered on 21.09.2017, in entirety :

“By an order dt.10.7.2017 passed in Family Court Appeal No.25 of 2017, we had stayed the Judgment of the Family Court on believing that the stay was sought only to the decree passed in faovur of the wife for Restitution of Conjugal Rights. The other part of the order of the Family Court directing the husband to pay a sum of Rs.15,000/- p.m. to the wife and the daughter if the husband refuses to permit the wife to reside in the matrimonial home was not brought to our notice.

We intend to decide this appeal finally within a short time. However, till the appeal is heard and finally decided, we stay the Judgment of the Family Court only on the condition that the husband pays a sum of Rs.7,500/- p.m. for the wife and the daughter regularly and deposits the arrears of maintenance @ Rs.7,500/- p.m. in the Family Court within one month, as directed by the Order dt.21.9.2017 in FA.No.25 of 2017. We make it clear that the husband would be required to deposit Rs.7500/- per month, in respect of both the appeals.”

9. It further appears that the husband challenged the order dated 21.09.2017 rendered by the Division Bench, in Special Leave Petition which came to be dismissed by the Hon’ble Supreme Court vide order dated 02.12.2018.

10. The limited issue involved is whether the husband is in arrears. The interim order of the Division Bench directs the husband to deposit the

arrears at the rate of Rs.7500/- per month and to continue to deposit the regular monthly maintenance at the rate of Rs.7500/- per month. The Division Bench has made it clear that the said amount is in the respect of both the appeals. While the learned Counsel for the wife Mrs. Dharmadhikari understands the interim order of the Division Bench as a direction that the husband should deposit Rs.7500/- per month in both the appeals, I am unable to accept such a submission. Be it noted, that it was only in Family Court Appeal 25 of 2017 that the order of maintenance, in default of Restitution of Conjugal Rights, is made. It would be an irony to assume that while granting stay to the order of maintenance in Family Court Appeal 25 of 2017, the Division Bench intended to direct deposit of Rs.7500/- also in Family Court Appeal 19 of 2017, in which there was no direction by the Family Court to pay maintenance.

11. Learned Counsel Mrs. Dharmadhikari would then contend that the stay of granted by the Division Bench is conditional and since the amount of arrears of maintenance was not deposited in the Family Court within one month, the stay is not operating. I would be loath to indulge in an exercise of interpreting the order of the Division Bench. If according to the wife, the interim order of the Division Bench has ceased to operate or needs modification or clarification, she is free to approach the Division Bench and seek appropriate relief.

12. I have perused the affidavit placed on the record by the petitioner-husband which asserts that till November 2021, the petitioner is in

arrears only of Rs.25,000/- and the said amount shall be paid. I have also perused the counter affidavit filed by the respondent-wife. However, the counter affidavit proceeds on certain assumptions, which I refrain from considering since the assumptions are based on the understanding of the wife of the interim order of the Division Bench.

13. As the situation stands today, the order impugned will have to be quashed.

14. The order impugned is quashed.

15. The matter is remitted to the learned Judge of the Family Court to consider the affidavit and the counter affidavit filed in this Court and the observations in this order and to decide the application Exhibit 11 afresh after hearing the parties.

16. According to the learned Counsel for the petitioner excess amount is deposited. This aspect is left for the learned Judge of the Family Court to consider.

17. The amount deposited by the petitioner-husband in this Court, shall be remitted to the Family Court.

18. The petition is partly allowed in the afore-stated terms.

JUDGE