

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5908/2022

Sumit s/o Mahesh Naidu

...Versus...

Sonam w/o Sumit Naidu

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Nerkar, Advocate for petitioner
Shri V.S. Dhobe, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/10/2022

1. Heard Shri Nerkar, learned counsel for the petitioner and Shri Dhobe, learned counsel for the respondent. By the order dated 11/08/2021 (pg.27), the salary of the petitioner has been attached to the extent of Rs.20,000/- p.m. till the satisfaction of the entire decretal amount of Rs.10,39,000/-.

2. Shri Nerkar, learned counsel for the petitioner has a serious grievance regarding second part of the order as it is contended by him that the decretal amount is not Rs.10,39,000/- but is something less. He submits that by the judgment dated 16/07/2014 passed in Petition No.A-

266/2013 (pg.45), the petitioner was directed to pay a sum of Rs.7,00,000/- within three months, failing which, it would carry interest @ 8% per annum on the unpaid amount. It also directed refund of value of gold ornaments worth Rs.3,25,000/-. It is submitted that in pursuance to the order dated 10/10/2014 in Civil Application (CAF) No.2670/2014 in First Appeal No.766/2014 an amount of Rs.3,50,000/- was deposited in this Court on 24/11/2014 and further amount of Rs.3,50,000/- was deposited on 14/07/2015 and thus the entire amount of Rs.7,00,000/- stood deposited in this Court, out of which, the first deposit of Rs.3,50,000/- has been withdrawn by the respondent. It is, therefore, submitted that the impugned order, which ignores this position, cannot be sustained.

3. Shri Dhobe, learned counsel for the respondent, does not dispute, that the amount of Rs.7,00,000/- was deposited in this Court, as indicated above, out of which, the sum of Rs.3,50,000/- has already been withdrawn by the respondent.

4. From the above, it is therefore apparent that since the amount of Rs.7,00,000/- already stood deposited in this Court, the Executing Court was not justified in holding that the entire decretal amount was Rs.10,39,000/-.

5. In fact, the petitioner would only be liable for payment of interest @ 8% per annum on the amount of Rs.7,00,000/- from 15/10/2014 till 23/11/2014 and on the amount of Rs.3,50,000/- from 24/11/2014 till 14/07/2015 and a payment of Rs.3,25,000/-.

6. The impugned order is, therefore, hereby quashed and set aside and it is clarified that the total amount which the respondent is entitled to receive is Rs.3,25,000/- and the interest @ 8% per annum on the amount of Rs.7,00,000/- from 15/10/2014 till 23/11/2014 and on the amount of Rs.3,50,000/- from 24/11/2014 till 14/07/2015 and the decretal amount would be a total of the aforesaid sums and not Rs.10,39,000/-, as is indicated in the impugned order and the deduction would only be restricted to the aforesaid amount. The writ petition is according partly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar