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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2132 OF 2022

Anilkumar Pritamdasji Shamdasani

PETITIONER

VERSUS

Jaya Anilkumar Shamdasani

RESPONDENT

Mr. Sagar A. Shahani, Advocate for the petitioner

Mr. R. S. Deshmukh, Senior Advocate a/w Mr. Jay Veer i/b Mr.
Devang R. Deshmukh, Advocate for respondent

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th JULY, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Judge, Family Court, Nanded below Exhibit-7 in Petition No. A-21 of 2019 thereby allowing the application filed by the respondent- wife under section 24 of the Hindu Marriage Act and awarding interim maintenance @ Rs.25,000/- per month to the wife.

2. Heard learned advocate for the petitioner-husband and learned senior advocate for the respondent-wife. Perused the memo of writ petition, documents annexed along with it and the impugned order.

3. Learned advocate for the petitioner assailed the impugned order on the ground that it is an *ex parte* order and no opportunity of hearing was given to the petitioner. The petitioner even could not file his say and affidavit disclosing his income, assets and liabilities. He submits that some of the assets, shown to be owned by the petitioner in the affidavit filed by the wife, are not even in existence. He submits that due to Covid-19 pandemic lock down the petitioner was not in a position to attend the matter and without his say the interim maintenance application is decided behind his back, without giving opportunity of hearing to him. Since the petitioner did not get an opportunity to bring all these aspects on record of the Family Court, the impugned order is passed, thereby granting exorbitant amount of interim maintenance. He, therefore, submits that the impugned order is liable to be quashed and set aside.

4. Learned senior advocate appearing for the respondent – wife supported the impugned order submitting that though opportunity was given to the petitioner, he has failed to avail the same and this aspect is considered by the Family Court in paragraph No.3 of the impugned order. He, therefore, submits that there is no substance in the contention of the petitioner that *ex parte* order is passed and no opportunity of hearing was given

to the petitioner – husband. Further submission is that the Family Court has observed in paragraph N.4 of the impugned order that the facility of hearing through video conferencing and filing say through e-mail and by post was not availed by the petitioner. He further submits that the petitioner is a multimillionaire and is avoiding to pay maintenance to the wife. According to him, as on today, the amount of arrears of interim maintenance is Rs.13.50 lakh, out of which, under the orders of this Court, only an amount of Rs.3 lakh is deposited by the petitioner – husband. He, therefore, submits that there is no substance in the petition and the petition may be dismissed with costs.

5. *Prima facie*, there appears substance in the contention of the petitioner that due to Covid-19 pandemic lock down, he was not in a position to attend the proceedings in the Family Court at Nanded. Due to lock down, he could not avail the facility of video conferencing and also could not file his reply to the interim maintenance application and affidavit disclosing his income, assets and liabilities.

6. Admittedly, the impugned order is passed without giving opportunity of hearing to the petitioner. The petitioner deserves fair opportunity to contest the interim maintenance application

on merits, by filing say and affidavit of his income assets and liabilities. The impugned order, therefore, is unsustainable in law and facts of the case.

7. In the peculiar facts of the case and in the interest of justice, following order is passed.

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 24th June, 2021 passed by the learned Judge, Family Court, Nanded below Exhibit-7 in Petition No. A-21 of 2019 is hereby quashed and set aside.
- C. Family Court shall decide application Exhibit-7 afresh, on merits, after giving opportunity of hearing to the parties, within a period of four weeks from the date of receipt of writ of this order.
- D. The petitioner shall file his say to the application Exhibit-7 and affidavit disclosing his income, assets and liabilities within a period of two weeks from the date of receipt of writ of this order.
- E. The petitioner – husband shall pay 50% of the

arrears of interim maintenance to the respondent - wife. Since the petitioner has already deposited an amount of Rs.3 lakh, the petitioner shall now pay an amount of Rs.3.75 lakh to the respondent – wife, in the Family Court without prejudice to his rights and contentions, within a period of two weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE