

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

953 CRIMINAL REVISION APPLICATION NO.37 OF 2020

SHRIMANT S/O. HARISHANDRA KHANDAGALE
VERSUS
SHOBHA @ LAXMI W/O. SHRIMANT KHANDAGALE

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Advocate for Applicants : Mr. Ingale Vivekanand V.
Advocate for Respondent : Mr. Sanjay A. Wakure
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CORAM : S. G. MEHARE, J.
DATE : 28.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondent.
2. Skipping the grounds impugning the order on merit, the learned counsel for the applicant would submit that the applicant could not avail the opportunity to cross-examine the witnesses and lead the evidence. Therefore, a fair opportunity may be granted to contest the application on merit.
3. The learned counsel for the respondent would argue that there were no justifiable reasons to remit the matter. Sufficient opportunities were granted to him to cross-examine the witnesses and lead the evidence, but he did not care. The

learned Judge, Family Court, has correctly proceeded ahead. Therefore, this is not a fit case for remitting the case back for disposal on merit.

4. Perused the impugned order and Roznama. It appears that the applicant applied to set aside the no cross order, which was allowed. But, he did not avail the opportunity granted to him by the learned Family Judge.

5. The learned counsel for the applicant would argue that he could not approach the Court due to the financial crisis. He was unaware of the progress of the case, and he was trying to settle the dispute amicably as earlier he had settled. He never had the intention to be absent from the appearance in Court. He has good ground for contesting the application on merit. Therefore, a liberal view may be taken.

6. Considering the facts of the case, the Court thinks it fit and appropriate to take a liberal view, and the opportunity may be granted to the applicant to contest the matter on merit, provided the applicant has to clear the entire arrears of maintenance and continue to pay the maintenance as per the impugned order. In the above circumstances, the following order is passed :

ORDER

- (i) The criminal revision application is allowed.
- (ii) The judgment and order of the learned Judge, Family Court, Osmanabad, passed in Case No.E-3 of 2019, dated 07.01.2020, is quashed and set aside.
- (iii) The Petition is remitted back to the Family Court, Osmanabad, for a fresh decision on granting the opportunity to the applicant to cross-examine the witnesses produced by the respondent-wife and lead the evidence on the condition that he shall clear the arrears of maintenance in three (3) equal installments (one month each) from today and continue to pay the amount of maintenance granted in the impugned order till the conclusion of the petition on merit.
- (iv) The parties are directed to appear before the Family Court, Osmanabad, on 13.04.2023.

- (v) The learned Judge, Family Court, is requested to decide the case within four (4) months from the date of the receipt of this order.

(S. G. MEHARE, J.)

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vmk/-