

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

933 CRIMINAL REVISION APPLICATION NO.81 OF 2021

DNYANDEO RAMBHAU JAIBHAY
VERSUS
MANISHA W/O. DNYANDEO JAIBHAY AND OTHERS

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Advocate for Applicant : Mr. Tungar Hrishikesh V.
Advocate for Respondents : Mr. S. G. Kawade.

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CORAM : S. G. MEHARE, J.
DATE : 10.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondents.
2. The wife and children had filed petition for maintenance on 27.07.2015. The applicant/husband did not appear. He thus appeared with an application to leave to file written statement. Leave was granted with costs, but he did not pay. He again applied for permission to file written statement. The Court considered his request and imposing additional costs, allowed him to file written statement. Mean time, the matter was transferred to the Family Court. The applicant/husband was represented before the Family Court through lawyer. However, the witnesses were not cross-examined. Therefore,

the applicant/husband on 06.04.2021 had applied to grant him an opportunity to cross-examine the witnesses. The learned Judge, Family Court, Beed considering his past conduct declined to grant him a leave to cross-examine the witnesses and proceeded to pass the impugned judgment.

3. The learned counsel for the applicant would argue that situation were beyond the control of the applicant. It was a Covid-2019 pandemic period. The present applicant went away for livelihood. Hence, he could not reach the Court on time. He would argue that sufficient opportunity to contest the petition on merit may be granted and his interest may be protected.

4. Per contra, the learned counsel for respondent/wife and children would argue that the conduct of the applicant was not fair. Time and again, the opportunity was granted to him. Till date, he did not pay a single penny to the respondents. He is deliberately avoiding his responsibility. The impugned order is legal, correct and proper.

5. It appears from the record that for one reason or the other, the present applicant/husband did not cross-examine the witnesses. He has assigned the reason that due to Covid-19, he could not reach the Court and cross-examine the witnesses.

When he moved an application on 06.04.2021, the judgment was not delivered. The case was just closed for delivering the judgment. The judgment was pronounced on the very same day when his application for permission to cross-examine the witnesses was rejected. Considering the facts and circumstances of the case, this Court is of the view that fair opportunity to contest the matter on merit should be granted. However, the conduct of the applicant/husband cannot be ignored. He did not pay a single penny to the respondent/wife and children. *Prima facie* they have no source of income. Therefore, certain conditions may be imposed. Hence, the following order :

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The impugned judgment and order of the learned Judge, Family Court, Beed in Petition No.E-14 of 2020, dated 06.04.2021 is quashed and set aside.
- (iii) The case is remitted back to the Judge Family Court, Beed for disposal on merit by giving an opportunity to the applicant to cross-examine the witnesses and lead the evidence on the conditions that ;

- (a) He shall deposit half of the arrears of maintenance as per the order dated 06.04.2021 in three (3) equal installments.
- (b) He shall deposit the first installment of the arrears of maintenance on 03.04.2023 and thereafter deposit money in remaining two installments.
- (c) In addition to this, the applicant shall continue to pay the maintenance of Rs.2,000/- to Non-Applicant No.1 and Rs.1500/- each to Non-Applicant Nos.2 and 3 by way of interim maintenance till the conclusion of the petition on merit.
- (iv) After compliance of the above conditions, the Judge, Family Court, Beed is requested to dispose of the matter within three (3) months thereafter.

(S. G. MEHARE, J.)

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vmk/-