

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

947 CRIMINAL WRIT PETITION NO.1000 OF 2022

**NITESH SURESH SALVE
VERSUS
SAVIYA W/O. NITESH SALVE AND ANOTHER**

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Advocate for Petitioner : Mr. R.P. Cheble h/f S.S. Gangakhedkar
Advocate for Respondents : Mrs. M.G. Kasturkar
(appointed Through Legal Aid)

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**CORAM : S. G. CHAPALGAONKAR, J.
Dated : October 17, 2023**

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PER COURT :-

1. The petitioner-husband impugns the order dated 5.5.2022 passed below exhibit-21 by the learned Family Court, Jalgaon in Petition No.E-140 of 2021.

2. The respondent has initiated a proceeding under section 125 of the Criminal Procedure Code before the Family Court, Jalgaon claiming maintenance of Rs.10,000/- each. Notice of said proceeding was served upon the petitioner. He caused appearance through advocate. However, failed to file the say. Resultantly, the Family Court passed an order dated 17.3.2022 directing the petition to proceed without say. Thereafter, petitioner filed an application at exhibit 21 praying to set aside 'No say order'. The Family Court refuses to entertain such application on the ground that no reasons are mentioned as to why say was not filed in time.

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3. Learned counsel appearing for the petitioner would submit that the petitioner had not received the copy of the application filed under section 125 of the Criminal Procedure Code and annexures thereto. Therefore, he could not file his say in time. Specific reason is mentioned in the application for setting aside no say order that the applicant was precluded from filing say for want of copies of the aforesaid documents. However, the Family Court observed that it was the duty of the petitioner to receive copies from the record. He would therefore submit that the impugned order is erroneous. The applicant has every right to defend the application filed by the respondent on merit. Hence, his say is necessary.

4. Learned advocate appearing for the respondents strongly opposes the prayer. She would contend that the applicant had sufficient opportunity to file reply. Copies of the petition alongwith annexures were filed with the Family Court and those were part of the record. The applicant was under obligation to receive copies and file his say.

5. Having considered the submissions advanced, it is apparent that the applicant had not received copy of the application alongwith reply. In fact such copy needs to be forwarded alongwith summons. However, it was kept in the file of the Family Court. Be that as it may, now the petitioner can receive such copy from the Court and file his reply. The impugned order does not consider the aforesaid aspect. Even it sans requisite reasons. Prayer of the applicant for setting

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aside no say order ought to have been considered. In that view of the matter, case is made out to allow the writ petition however, subject to certain costs. Hence, the order.

O R D E R

- i. Criminal Writ Petition is allowed.
- ii. The impugned order dated 5.5.2022 passed below Exhibit 21 by the learned Family Court, Jalgaon in Petition E-140 of 2021 is hereby quashed and set aside.
- iii. The application below exhibit 21 filed on record of the petition No.E-140 of 2021 before the Family Court, Jalgaon is hereby allowed.
- iv. 'No say' order dated 5.5.2022 is hereby quashed and set aside subject to condition that the petitioner pays the amount of Rs.5,000/- (Rs. Five Thousand) to respondents within a period of four weeks towards cost.
- v. Writ Petition is accordingly disposed off.

(S. G. CHAPALGAONKAR, J.)

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