

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

CRIMINAL WRIT PETITION NO.1009 OF 2023

**SHUBHAM RAMESH MAGRE
VERSUS
AMARAPALI SHUBHAM MAGRE**

Mr. J. A. Menezes, Advocate for the petitioner
Mr. R. P. Nagarkar, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 24th AUGUST, 2023

P.C. :-

1. Petitioner is challenging order dated 17th April, 2023 passed by the Family Court, Jalna in petition No. E-216 of 2022 whereby application (Exhibit 15) filed by the petitioner for setting aside no say order is rejected on 28th June, 2023.

2. It is the contention of the learned counsel for the petitioner that the petitioner who was served with notice issued by the Family Court, had never instructed Advocate Mr. Alan N .K. to appear on his behalf and that the appearance caused by the said Advocate before the Family Court on 4th March, 2023 is without his instructions. He further claims that since status of proceeding before the Family Court, Jalna is not available on website of District Court, petitioner was unable to find out the next dates of hearing. According to him it is only after making an

inquiry with Advocate, he could cause his appearance before the Court on 05th June, 2023. It is his contention that there is no deliberate or intentional act on the part of the petitioner in not appearing before the Family Court and hence the impugned order deserves to be set aside.

3. This contention is opposed by the learned counsel for the respondent by referring to the orders passed by the Family Court from time to time in the matter, which show that petitioner had knowledge of the proceeding and he deliberately avoided to appear initially to drag the same further.

4. There is no dispute about the fact that the petitioner was duly served with the notice of the Family Court before 4th March, 2023. There is no explanation forthcoming to provide reason for his non appearance before Family Court on scheduled date of hearing. Further there is nothing to indicate as to how petitioner who was duly served with the notice before 4th March, 2023, caused appearance personally before the Family Court only on 5th June, 2023. Petitioner has not taken any action against concerned lawyer and hence this Court finds no substance in the contention of the petitioner that he never instructed Advocate Alan N.K. to cause appearance on his behalf. In any case, there is no satisfactory reason for non appearance before the Court, in spite of service of notice and hence no fault can be found with order passed for

proceeding without say/reply of the petitioner herein. Even for the sake of arguments it is accepted that concerned Advocate had no instructions to appear, still absence of petitioner before Court after due service of notice, must lead to passing of such order.

5. The only issue requires consideration is as to whether any opportunity is required to be given to the petitioner to file his say in the proceeding filed by respondent under section 125 of Cr.P.C. for seeking maintenance and to contest the same. It is settled law that as far as possible lis between the parties should be decided on merit instead of its dismissal/determination on technicalities. Only for this reason no say order needs to be set aside. However, having regard to the conduct of the petitioner which is clearly indicative of the fact that he was intending to delay the hearing of the proceeding and only after the matter was kept for evidence caused his appearance on 5th June, 2023, thus, this is a fit case wherein reasonable cost must be imposed on the petitioner to enable him to file written statement. In the facts and circumstances of the case and having regard to nature of the proceeding, cost is quantified at Rs.5,000/- .

6. Learned counsel for the petitioner makes statement that the proceeding before the Family Court is scheduled for hearing on 31st August, 2023. The cost of Rs.5,000/- to be paid on or before 31st August,

2023. Learned Family Court to verify from tangible evidence that the cost so directed is paid to the respondent herein and only thereafter to allow written statement/reply/say of the petitioner be taken on record. In both contingencies i.e. non payment of cost on or before due date and non filing of say/reply on that day, it is open for the Family Court to proceed further with matter without say/reply of petitioner.

7. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

ssp