

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

**CRIMINAL REVISION APPLICATION NO.359 OF 2022**

WITH

**CRIMINAL APPLICATION NO.2856 OF 2022**

IN REVN/359/2022

Sayyed Irfan S/o Sayyed Burhan,  
Age 27 years, Occu. Labour,  
R/o Sindhi Kalegaon,  
Taluka and District Jalna.

... Applicant.

Versus

1. Suraiya W/o Sayyed Irfan,  
Age 21 years, Occu. Housewife,  
R/o Sindhi Kalegaon,  
Taluka and District Jalna.

2. Aayan S/o Sayyed Irfan,  
Age 2 years, Occu. Nil,  
R/o Sindhi Kalegaon,  
Taluka and District Jalna.

... Respondents.

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Advocate for Applicant-Petitioner : Ms. Salunke Sheetal Vilas.

Advocate for Respondents : Mr. Usmanpurkar Aniruddha S.

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**CORAM : S. G. MEHARE, J.**

**DATE : 24.04.2023**

**ORAL JUDGMENT :-**

1. Rule. Rule made returnable forthwith and heard finally  
by consent of the parties.

2. The applicant/husband has impugned the *exparte* judgment and order of the learned Judge, Family Court, Jalna, in Petition No.E-127 of 2021, dated 25.02.2022.

3. Learned counsel for the applicant would submit that the learned counsel, engaged for the applicant did not inform the next date to the applicant. He also did not advise him to file written statement. There was a communication gap between the lawyer and the applicant. Hence, the matter was proceeded *exparte*. The quantum of maintenance was determined barely on the basis of photographs of the shops and the load carrying vehicle. She would argue that the applicant is a labourer. Therefore, granting maintenance of Rs.7,000/- per month to both the respondents is high and disproportionate. She would argue that the applicant has a good case on merit and chances of success in the petition. Therefore, the matter may be remitted back to the learned Judge, Family Court, Jalna by giving an opportunity to contest the petition on merit.

4. Per contra, learned counsel for the respondents would submit that the reasons assigned for his absence appear not genuine. He was well aware of the proceedings. He did not inquire with the counsel engaged by him. Therefore, he cannot blame the counsel. He has a sufficient source of income. The

son was only two years old at the time of filing of the revision application. They have no source of income. 50% arrears of the maintenance has been deposited. However, respondents are not getting regular maintenance. The applicant avoided his responsibility to maintain the respondents. It may not be appropriate to remit the matter back, as there would be no change in the facts.

5. Perused the impugned order. It appears that the counsel for the applicant was appeared in the matter. However, he did not file reply and attend the proceeding. Cross-examination of the witnesses was not taken. It appears that there was a communication gap between the applicant and his counsel. An opportunity may be granted to the applicant to contest the matter on merit on certain conditions. Hence, the following order :

### **ORDER**

- (i) Criminal Revision Application is allowed.
- (ii) The impugned judgment and order granting maintenance passed by the learned Judge, Family Court, Jalna, in Petition No.E-127 of 2021, dated 25.02.2022 is quashed and set aside.

- (iii) The case is remitted back to the learned Judge, Family Court, Jalna for deciding the matter on merit by granting an opportunity to both sides to lead the evidence within six(6) months from the receipt of this order, on the condition that the applicant shall clear the arrears of maintenance as per the impugned order @ Rs.5,000/- per month and continue to pay Rs.5,000/- per month, till the conclusion of the proceeding on merit.
- (iv) Leave to withdraw arrears of 50% was already granted to the respondents.
- (v) Record and Proceeding be returned to the Family Court, Jalna.
- (vi) Criminal Application No.2856 of 2022 stands disposed of.
- (vii) The applicant shall clear the balance arrears of maintenance within four (4) months by four equal installment.
- (viii) Rule stand absolute.

**(S. G. MEHARE, J.)**

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vmk/-