

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

956 CRIMINAL REVISION APPLICATION NO.127 OF 2021

WITH APPLN/2858/2023 IN REVN/127/2021

SHAIKH BANDUBHAI SHAIKH GULABBHAI
VERSUS
SHAIKH SALIMABI BANDUBHAI SHAIKH

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Advocate for Applicant : Mr. Rode Dilip B.
Advocate for respondent : Mr. Shaikh M. S., Pathan Y. B.

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CORAM : S. G. MEHARE, J.
DATE : 09.08.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the respondent.
2. The applicant/husband has impugned the judgment and order of the learned Judge, Family Court, Ahmednagar passed in Petition No.E-75 of 2018, dated 06.01.2020.
3. Learned counsel for the applicant would submit that due to the miscommunication between the applicant and his counsel, the proceeding could not be contested on merit. There was no deliberate intention to proceed *ex-parte*. The applicant has a good case on merit. The enhancement of maintenance was exorbitant. The opportunity to oppose the change-in-circumstances could not be availed due to the

miscommunication. Hence, opportunity may be granted to contest the application on merit by setting aside the impugned judgment and order.

4. Learned counsel for the respondent would submit that there is nothing on record to believe that due to the miscommunication between the applicant and his lawyer, he could not contest the petition. On the contrary, it seems that he was negligent towards the litigation and therefore, the Court proceeded *ex-parte*. That apart, the enhancement of the maintenance of Rs.650/- per month to Rs.7,000/- was proportionate. The applicant has no case on merit. Hence, petition may kindly be dismissed.

5. It is an admitted fact that the proceeding for enhancement of the maintenance proceeded *ex-parte*. The miscommunication between the lawyer and the litigant cannot be ruled out. There appears excess enhancement of the maintenance. The facts on change-in-circumstance are to be tested on giving an opportunity to the applicant to contest the application. To protect the interest of the respondent, reasonable interim orders granting maintenance can be passed and the matter may be disposed of on merit. Hence, the following order :

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The judgment and order of the learned Judge, Family Court, Ahmednagar passed in Petition No.E-75 of 2018, dated 06.01.2020 is quashed and set aside.
- (iii) Both parties to appear before the Judge, Family Court, Ahmednagar on 30.08.2023.
- (iv) After the appearance, the present applicant shall file his written statement within one month.
- (v) The learned Judge, Family Court, Ahmednagar shall endeavour to dispose of the case at the earliest.
- (vi) Till the petition filed by the respondent before the Judge, Family Court, Ahmednagar bearing Petition No.E-75 of 2018 is decided on merit, the applicant/husband shall continue to pay Rs.3,000/- per month as interim maintenance.
- (vii) It is clarified that the learned Judge, Family Court shall determine the quantum of maintenance

independently without influence by this order granting interim maintenance.

(viii) The respondent is at liberty to withdraw the amount deposited by the applicant before this Court.

(ix) Criminal Application No.2858 of 2023 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-