

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1553 OF 2022

SANTOSH HARI CHAUDHARY AND OTHERS

VERSUS

YAMINI SANTOSH CHAUDHARY AND ANOTHER

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Advocate for Petitioners : Mr. Ghute Patil Kishor J.

APP for Respondent No.2/State : Mr. P. M. Kulkarni

Advocate for Respondent No.1 : Mr. Zambare Sudheer R.

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CORAM : KISHORE C. SANT, J.

DATE : 3rd FEBRUARY 2023.

Per Court :

Heard.

1. The challenge in this petition is to an order passed by the learned Sessions Judge, Bhusawal in Criminal Revision Application No.59/2022 dated 26.09.2022, whereby the Revision of the present petitioner/husband is dismissed. The petitioner/husband had filed a Revision against the order dated 22.07.2022 passed by the learned Judicial Magistrate First Class, Yawal in PWDVA No.1/2020, thereby striking of the defence of the petitioner. The order was conditional that

the petitioner was to clear the amount of arrears of interim maintenance within a period of fifteen days. The petitioner/husband could not pay the amount of arrears within the said period and therefore, his defence is struck off.

2. The learned Advocate for the petitioners submits that the valuable right of defence of the petitioner is now taken away and a great prejudice would be caused if he is not allowed to put forth his defence. He submits that in view of changed circumstances, that the petitioner suffered due to Corona Virus. He has also now become blind. He has annexed to the petition a disability certificate, showing that he has incurred 100% disability. This fact is however disputed by the respondent/wife.

3. For the present, this Court is only considering that the order striking out of the defence of the petitioner/husband. It is true that the valuable right of the husband is taken away by the impugned order passed by the learned JMFC, Yawal. However, at the same time it needs to be considered that it is because of the default on the part of the

petitioner, the Court was required to pass the impugned order. No fault can be found with the orders passed by the trial Judge and also by the learned Sessions Judge. However, only considering that the petitioner/husband has the valuable right to defend the proceeding, this Court is setting aside the order dated 26.09.2022 passed by the learned Additional Sessions Judge, Bhusawal in Criminal Revision Application No.59/2022 and consequently the order dated 22.07.2022 passed by the learned JMFC, Yawal in PWDVA No.1/2020 is also set aside.

4. This order shall be subject to condition that the petitioner shall clear all the dues of interim maintenance within a period of four weeks from today and he shall continue deposit 2000/- per month towards interim maintenance as directed by the learned trial Court. In case of failure to deposit the arrears within four weeks and further failure to deposit monthly Rs.2000/-, for consecutively three months, the defence of the petitioner shall again be liable to be struck off. Needless to say that the respondent/wife shall be entitled to withdraw the amount deposited by the petitioner. The amount to be deposited in the Court of JMFC, Yawal in proceeding i.e. PWDVA No.1/2020.

5. The learned trial Court is requested to make endeavor to dispose off the main proceeding as early as possible and preferably within six months from today.

6. With this, the Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.