

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

**35 CRIMINAL WRIT PETITION NO.1429 OF 2021
RANGNATH SAKHARAM AHIRE
VERSUS
MEENABAI W/O. RANGNATH AHIRE**

Mr.P.V. Ambade, Advocate for the petitioner.

Mr.Y.H. Jadhav, Advocate for sole respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 15.02.2023**

PC :-

01. Heard. The petition is taken up for final disposal by the consent of the parties.

02. A short issue involved in this petition is that the petitioner-husband was directed to pay the amount of maintenance by judgment and order dated 04.11.2011. Same was modified thereafter by order dated 01.03.2019 by consent of the parties that the husband will pay Rs.5500/- per month from 01.04.2019. Now the husband has filed an application under section 125(4) r/w section 127 of the Cr.P.C. for modification of order on the ground that earlier the husband was in service and now he has retired and he is not yet receiving pension. It is contention of the petitioner that pending this application, wife has filed execution proceedings in the Family Court at

Aurangabad. The learned Judge, Family Court, Aurangabad by order dated 10.08.2021 has issued notice as to why distress warrant should not be issued against the petitioner. The petitioner is, therefore, before this Court.

03. It is the submission of the petitioner that so long as he is not receiving pension, the execution petition No. ER-109 of 2021 before the Family Court be stayed, in which the distress warrant is issued.

04. This Court finds that such petition need not be entertained. The husband would be liable to pay maintenance amount as per order dated 01.03.2019, which is passed by consent of the parties, so long as it is modified by the Family Court. Till that period he has to pay the maintenance regularly and wife has every right to pray for execution and she has rightly filed the proceeding for execution. No ground is made out to stay the proceeding pending before the Family Court. At the most the petitioner can pray for expeditious disposal of the application pending before the Family Court, Aurangabad.

05. The petition is, therefore, rejected.

06. The learned Judge, Family Court, Aurangabad is requested to decide expeditiously the proceeding filed by the petitioner under section 124(4) r/w 127 of the Cr.P.C.

07. The respondent-wife is allowed to withdraw the amount of Rs.15000/- which is deposited by the petitioner pursuant to order dated 30.11.2022 without filing separate application.

[KISHORE C. SANT, J.]