

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

CRIMINAL REVISION APPLICATION NO.2 OF 2023

Pankajkumar S/o Vishnu Wadekar,
Age : 39 Years, Occ. Service
R/o. House No. 39, Siddhi
Vinayak Colon, Neelbud Chowrah,
Bhopal (Madhya Pradesh)

..Revision Applicant
Orig. Non-applicant

VERSUS

Sou. Mahamaya @ Vedikar w/o Pankajkumar
Wadekar,
Age : 28 Years, Occ. Education,
C/o. Pradeepkumar Namdevrao Kamble,
R/o. Sidharth Nagar, Malegaon Road,
Taroda Kd. Nanded.

.. Non-applicant
(Orig applicant)

...

Advocate for Applicant : Mr. G. N. Chincholkar
Advocate for respondent : Mr. U. B. Bilolikar

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CORAM : S. G. MEHARE, J.

DATE : 26.06.2023

ORAL ORDER :

1. The applicant/husband has impugned the judgment and order of the learned Judge Family Court, Nanded passed in Petition E.No. 189/2012 dated 23.09.2022.

2. The learned counsel for the applicant would submit that the

applicant had engaged the lawyer to represent him and contest the petition. However, the engaged lawyer did not pay attention and case proceeded ex-parte. The applicant has also not been informed about the ex-parte order. There was no fault on the part of the applicant. He has a good case on merit. Therefore, opportunity may be granted to contest the application on merit by the remitting the matter back.

3. The learned counsel for the respondent/wife would submit that the applicant is a Police Sub Inspector. He has sufficient means of income to pay the maintenance. He is unnecessarily blaming his lawyer. He was not deligent. He is in arrears of maintenance of Rs. 5,63,000/-. Till date, he did not pay a single pie to her. The reason assigned for seeking the relief are not tenable in the eye of law. Hence, he prayed to dismiss the petition. However, in the alternate, he would submit that in case the Court comes to the conclusion that the matter is to be remitted back, the applicant should clear the arrears of the maintenance and continue to pay some amount.

4. Perused the impugned judgment and order. It is not in dispute that the applicant had engaged the lawyer but he did not appear and the ex-parte judgment was passed. No written statement was filed. The applicant was residing in the State of Madhya Pradesh.

The possibility of communication gap cannot be ruled out. Therefore, a lenient view needs to be taken. However in absence of any evidence that the applicant had paid the respondent some amount, he deserves to be directed to pay certain amount. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The impugned judgment and order of the learned Judge, Family Court, Nanded in Petition No. E 189/2021, dated 23.09.2022, is quashed and set aside and matter is remitted back to the learned Family Court Nanded for disposal on merit on the condition that :-
 - (a) The applicant shall deposit Rs. 3,00,000/- as partly arrears of the maintenance within eight weeks from today before the Family Court Nanded and continue to pay Rs. 5,000/- per month to respondent from the date of impugned order till the matter is decided on merit.
- (iii) The learned Judge Family Court Nanded shall give an opportunity to the applicant to file written statement, cross-examine the witnesses, lead the evidence and also grant leave to lead additional evidence to the wife, if she so desires.
- (iv) Unless the applicant deposits Rs. 3,00,000/-, the matter shall not be proceeded ahead.

- (v) Upon depositing the arrears of amount of Rs. 3,00,000/- by the applicant, the respondent/wife would be entitled to withdraw the same on an undertaking that if Judgment of the Family Court would go against her, she would redeposit the aforesaid amount within eight weeks from the date of passing Judgment of learned Judge, Family Court, Nanded.
- (vi) Record and proceeding be returned to the Judge, Family Court, Nanded.

(S. G. MEHARE)
JUDGE

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