

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9423 OF 2022

Rajesh Arjun Gavali

...Petitioner

Versus

Jyoti Rajesh Gavali

...Respondent

Mr. Kuldeep U. Nikam for Petitioner.

Ms. Rati Sinhasane for Respondent.

CORAM: DR. NEELA GOKHALE, J.

DATED: 1st December 2023

PC:-

1. The Petitioner-husband assails the order dated 16th March 2022 passed by the Family Court, Sangli.

2. The facts of the case are that, the parties were married on 25th March 2015 at Sangli and the parties are blessed with the son viz. Arush, who is presently 8 years of age. A petition seeking restitution of conjugal rights was filed by the Respondent-wife in the Family Court, Sangli. The Respondent-wife has made an application under Section 24 of the Hindu Marriage Act, 1955 seeking interim maintenance of Rs. 10,000/- per month for herself and Rs. 5,000/- per month for their minor son Arush, during the pendency of proceedings. She has also sought an amount of Rs. 50,000/- towards the adjustment of medical expenses of a minor son Arush and a further amount of Rs. 35,000/- towards the school fees of their son.

3. The Family Court has partly allowed the application for interim maintenance and directed the Petitioner-husband to pay Rs. 10,000/- per month to the Respondent-wife and Rs. 5,000/- per month to their son as interim maintenance from the date of application. He was also directed to pay an amount of Rs. 34,000/- towards school fees of the son. It is this order, which is impugned by way of the present petition.

4. Mr. Kuldeep Nikam, the learned Counsel for Petitioner states that this order was passed *ex-parte* since neither he, nor his counsel were available to appear before the Family Court at the time of hearing of the application on account of the COVID pandemic. By an order dated 11th August 2022, this Court has granted an ad-interim stay to the impugned order subject to the Petitioner depositing Rs. 75,000/- within three weeks from the date of order.

5. Both learned Counsels concede that the said amount has been paid and the Respondent-wife has withdrawn the said amount.

6. It is the contention of Petitioner that the Respondent-wife is already getting an amount of Rs. 5,000/- per month pursuant to Consent Terms filed by the parties before the Court of Judicial Magistrate First Class, Sangli in Criminal Miscellaneous Application No. 686 of 2016, filed by the wife under the provisions of Domestic

Violence Act, 2005.

7. Be that as it may, the parties are separated since July 2016. The Respondent-wife is only getting Rs. 5,000/- per month towards maintenance as per the Consent Terms and that too intermittently.

8. Ms. Rati Sinhasane, the learned Counsel for Respondent-wife states that the Petitioner-husband has defaulted even in paying the said Rs. 5,000/- regularly. She further states that the Petitioner-husband has even failed to pay the medical expenses of the son incurred for an angioplasty, as agreed in the Consent Terms. The impugned order was stayed by the order dated 11th August 2022. Since then the Respondent-wife is only getting Rs. 5,000/- per month for her sustenance and that of her minor son. The Petitioner-husband admittedly is serving as a Police Naik, and as recorded in the impugned order, his total emoluments were Rs. 51,874/-.

9. In the circumstances, I am of the considered opinion that the impugned order does not suffer from any infirmity and there is no requirement of any interference in the said order. However, since the impugned order was passed *ex-parte*, the Petitioner-husband is at liberty to move the Family Court seeking modification of the order or setting aside the said order on that ground, as he may be so advised. The amount of Rs. 75,000/- deposited towards the arrears of interim

maintenance, will be adjusted with the total arrears due.

10. The petition is dismissed and disposed of in the above terms.

11. All contentions of the parties to be urged before the Family Court are left open.

12. The Family Court is requested to decide the application for modification/setting aside the impugned order, if filed by the Petitioner-husband, on its own merits and without being influenced by the observations in the present order.

(DR. NEELA GOKHALE, J.)

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by GITALAXMI
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KOTAWADEKAR
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