

SA Pathan

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

WRIT PETITION NO.11052 OF 2022

Asawari Anil Shitkar	... Petitioner
V/s.	
Anil Ambaji Shitkar	... Respondent

Mr.Nishigandh Patil a/w Komal Adate for the Petitioner.

Mr. Viral Ramod i/by Mr. Mangesh D. Nalavade and R.
Kurlkarni for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 16, 2023

P.C.:

1. The Petitioner is challenging the order dated 5th August, 2022. The Application was filed by the wife for modification of order of maintenance. This Court while considering entitlement of wife to get maintenance by order dated 25th April, 2018 recorded order by consent of the parties. Paragraph 5 of the order indicates that the wife was working at the relevant time. Based on that fact, this Court set aside order of granting maintenance to the wife.

2. The wife now contends that by relieving letter dated 3rd August, 2021, she has left her employment. According to her, therefore, the rights to claim of maintenance has been revived. The Family Court in paragraph 7 has recorded the findings that the wife has not produced any document to show that she has left her

job. The learned Advocate for the Petitioner invited my attention to relieving letter dated 3rd August, 2021 which according to him, which was produced before the Family Court.

3. If she has left her job, she may be entitled to maintenance subject to fulfillment of settled principles. Even otherwise, in view of observations made by the Apex Court in the case of **Rajnish V. Neha** reported in (2021) 2 SCC 324, employment of wife or her earning would not dis-entitle her from claiming maintenance.

4. In that view of the matter, the impugned order deserves to be set aside. Hence, the following order:

i. The impugned order dated 5th August, 2022 passed by the Family Court, Thane on Application below Exhibit 61 in the Petition No.164 of 2015 is set aside.

ii. The learned Family Judge shall decide the Application below Exhibit 61 after giving opportunity of hearing to both sides.

iii. The Family Court is directed to decide the Application within eight (8) weeks from today.

iv. The Petition is disposed of. All contentions are kept open for both parties.

(AMIT BORKAR, J.)