

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3744 OF 2022

Dr. Nishant Arvind Kale,
Aged about 33 years, Occ.: Medical
Officer, R/o in front of Anil Kale's
House, Ranpise Nagar, Akola, Tah and
Dist. Akola

...Petitioner

// VERSUS //

Vijayshree D/o Ganesh Ingle,
Erstwhile Vijayshree W/o Nishant
Kale, Aged about 28 years, Occ. Nil
R/o Vijayshree Nivas, Raigad Colony,
Khamgaon, Tah and Dist. Buldhana

... Respondent

Shri H.S.Chawhan, Advocate for the petitioner.
Shri Ankush Tirukh, Advocate for the sole-respondent.

CORAM : ANIL S. KILOR, J.

DATED : 20th FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In the present writ petition, order below exhibit 44, dated 4th March, 2022 passed by Civil Judge (Senior Division), Khamgaon in HMP No. 78 of 2017 accepting the affidavit filed by the respondent-wife, is under challenge.

3. The brief facts of the present case are as follows: A mutual agreement for divorce was entered into between the petitioner and the

respondent on 30th May, 2016 and accordingly a petition was filed which was decreed. However, the respondent thereafter claimed maintenance and accordingly permanent alimony was granted which was challenge upto this Court in Second Appeal. This Court remanded the matter for deciding the issue of permanent alimony in accordance with law.

4. Thereupon, the respondent filed an affidavit-in-chief Exhibit 20 which according to the petitioner is contrary to the earlier affidavit-in-chief filed by the respondent on 30th November, 2017. Therefore, the Exhibit 44 was filed by the petitioner on the ground that the affidavit-in-chief Exhibit 20 was filed without leave of the Court and therefore it be discarded.

5. In reply the respondent has stated that it was filed as per the directions of this Court in second appeal. The application Exhibit 44 was rejected by the trial court after recording the reasons, hence this writ petition.

6. Shri Chavan, learned counsel for the petitioner submits that the respondent instead of giving her details of assets and liabilities, has given details of assets and liability of the petitioner, which is not permissible under the law. It is submitted that without obtaining the leave of the Court, affidavit-in-chief came to be filed by the respondent. It is submitted that subsequently affidavit of assets and liabilities vide Exhibit 28 was filed and in that view the affidavit at Exhibit 20 loses its efficacy and therefore the Court should ignore affidavit Exhibit 20.

7. Shri Tirukh, learned counsel for the respondent support the order below Exhibit 44.

8. After considering the rival submissions, I am of the opinion that the learned trial Court has not yet decided the dispute as regards permanent alimony as directed by this Court in Second Appeal No. 125 of 2019, hence, I am of the opinion that the purpose would be served if the trial Court is directed to decide the amount of permanent alimony, after considering the objections raised by the petitioner to the affidavit Exhibit 20. In that view of the matter, the writ petition is disposed of in above referred terms.

9. The trial Court is directed to take a decision as regards the permanent alimony at the earliest. Needless to mention that points raised in this petition are kept open to be argued before trial Court.

[ANIL S. KILOR, J.]

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