

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

CRIMINAL WRIT PETITION NO. 505 OF 2022

PETITIONER : Mahadeo S/o. Marotrao Damahe,
Aged 50 years, Occu.- Business, C/o.
Mahadeo Damahe, Behind Nagpur
Vetarnary Near Hilt Durgamata
Temple, Manavseva Nagar, Seminary
Hills, Nagpur – 440006, P.S.
Gittikhadan.

//VERSUS//

RESPONDENTS : 1. Gauri alias Jyoti Mahadeo Damahe,
Aged about 40 years, Occu. -
Household.

2. Yash S/o. Mahadeo Damahe (now
major), Occ. - Student.

Both R/o. in the House of Purnaji
Patel Varma, Near Sai Mandir,
Lodhipura, Bajariya, Nagpur – 18.

Mr. Nihalsingh Rathod, Advocate for the Petitioner.

Ms. Mohini Sharma, Advocate (appointed) for the Respondents.

CORAM : G. A. SANAP, J.

DATED : 31st JULY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is
heard finally by consent of learned advocates for the parties.

02] The petitioner is aggrieved by order dated 1st June, 2022, passed by learned Judge of the Family Court No.-2, Nagpur, whereby the applications at Exhs. 51 and 57 made by the petitioner in Petition No.ER-113/2015 were rejected.

03] By way of Exh.51, the petitioner tried to contend before the Family Court that the respondent-wife had suppressed certain material facts. On this ground, a prayer was made for dismissal of the application. Exh.57 was made for summary dismissal of the execution petition i.e. Petition No.ER-113/2015 on various grounds and more particularly on the ground that the arrears of maintenance, sought to be recovered from 2008 onwards on the basis of an application made on 8th April, 2015, was not within limitation. It was contended that the amount of arrears of maintenance for a period of 11 months from 8th May, 2014 to 8th April, 2015 was within limitation.

04] It appears on perusal of the impugned order that learned Judge of the Family Court has not decided the principal ground pleaded in the application for summary dismissal of the petition. Learned Judge in view of certain facts set out in paragraph 2 of the order was required to decide this issue. Learned Judge was required to record a candid opinion as to whether the application in this

form filed by the respondent-wife for recovery of arrears was within limitation or not. It is seen that without even slightly advertent to this issue, the applications were rejected. In my view, the learned Judge of the Family Court, being the fact finding Court, was required to decide all the issues raised before him by applying the provisions of the law.

05] In the facts and circumstances, in my view, for the purpose of proper adjudication of the applications at Exhs.51 and 57, the impugned order is required to be set aside. Accordingly, the impugned order dated 1st June, 2022, passed by learned Judge of the Family Court No.-2, Nagpur, is quashed and set aside. The applications at Exh.51 and 57 are restored to the file of the Family Court. Learned Judge of the Family Court shall decide the applications at Exhs.51 and 57 in accordance with law and more particularly by taking into consideration all the objections raised *vide* Exh.57.

06] The parties are directed to appear before the Family Court on 7th August, 2023 at 11:00 a.m.

07] Rule is made absolute in the above terms.