

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

CRIMINAL WRIT PETITION NO. 608 OF 2022

PETITIONER : Purushottam S/o. Manikrao Ragit,
Aged about 60 years, Occ. Builder,
R/o. Plot No. 4, Mayur Complex,
Amravati Road, Dattawadi, Nagpur

//VERSUS//

RESPONDENT : Smt. Kamal @ Kamini W/o.
Purushottam Ragit (Ku. Kamal D/o.
Kashiram Pothare), Aged about 50
years, Occ. Household, R/o. Ayurvedic
Layout, Sakkardara, Nagpur.

Mr. P.V. Vaidya, Advocate for the Petitioner.
Mr. M.P. Kariya, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 9th FEBRUARY, 2023.

ORAL JUDGMENT

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

02] In this petition, challenge is to the order dated 22nd July, 2022 passed by the Family Court No.3, Nagpur, whereby the learned Judge of the Family Court was pleased to reject the application made by the petitioner-husband for stay to the

execution proceeding, filed by the respondent-wife for recovery of the maintenance amount awarded in terms of the order dated 7th July, 2014.

03] Few facts necessary for adjudication of this petition may be stated as under:

The Family Court, Nagpur *vide* order dated 7th July, 2014 had allowed the application made by the respondent-wife under Section 125 of the Code of Criminal Procedure, 1973 (for short “Cr.PC”) and awarded maintenance of Rs.7,000/- per month from the date of the petition i.e. 11th September, 2012. Against this order, the petitioner-husband had filed a revision application bearing No.149/2014 before this Court. The said criminal revision application was disposed of finally by this Court on 27th August, 2019. In view of the facts brought to the notice of this Court, this Court granted permission to the petitioner-husband to withdraw the said criminal revision application with liberty to file an application under Section 127 of the Cr.PC before the Family Court for cancellation of the maintenance and consequently the order passed by the Family Court dated 7th July, 2014.

04] In terms of the order dated 27th August, 2019, the petitioner-husband filed an application bearing No.47/2019 under

Section 127 of the Cr.PC for cancellation of the maintenance awarded to the respondent-wife. The respondent-wife has filed reply and opposed the said application. I am informed that the said application is now posted for cross-examination of the petitioner-husband. The learned advocates for the parties further submit that the application made by the petitioner-husband under Section 127 of the Cr.PC can be disposed of within three months.

05] During the pendency of application filed under Section 127 of the Cr.PC, the petitioner made an application at Exh.21 and prayed for stay to the execution proceeding, filed by the respondent-wife for recovery of the maintenance awarded in her favour, as per the order dated 7th July, 2014. The learned Judge granted an opportunity of hearing to the parties. The learned Judge for the reasons recorded in the order dated 22nd July, 2022, was pleased to reject this application.

06] The petitioner-husband has come before this Court by challenging this order. It is to be noted that, as on today, the order awarding the maintenance has not been stayed. The learned advocates for the parties submit that considering the nature of the dispute, this petition can be disposed of by giving direction to the petitioner-husband to deposit 50% arrears of maintenance in terms

of the order dated 7th July, 2014, within 15 days from today. The learned advocates for the parties further submit that in view of the peculiar facts of the matter, the Trial Court may be requested to expedite the hearing of the application. In my view, the submissions are fair and reasonable. This petition can, therefore, be disposed of in terms of the submissions made by the learned advocates for the parties. The disposal of the petition in view of the above terms, would meet the ends of justice and advance the interest of both the parties.

07] Accordingly, the petitioner-husband is ordered and directed to deposit 50% arrears of maintenance in terms of the order dated 7th July, 2014, within 15 days from today. The respondent-wife is granted liberty to withdraw the said amount, if deposited by the petitioner-husband. However, considering the nature of the dispute between the parties, the respondent-wife shall furnish an undertaking to the Court that, if the order granting maintenance is cancelled, then she will deposit the amount of the arrears of maintenance paid to her, within 15 days from the date of the said order. Therefore, subject to furnishing an undertaking, she is allowed to withdraw the amount.

08] It is made clear that, if the respondent-wife succeeds in the proceeding, the petitioner-husband shall deposit remaining 50% arrears of maintenance, within 15 days from the date of the said order.

09] It is further made clear that, if there is failure on the part of the petitioner-husband to deposit 50% arrears of maintenance as ordered by this Court, then the respondent-wife would be at liberty to proceed further with the execution proceeding.

10] The learned Judge of the Family Court is requested to dispose of the application, within three months from today.

11] The parties shall appear before the learned Judge of the Family Court on the fixed date given in the matter, which is 4th March, 2023.

12] The petition stands disposed of in above terms.

(G. A. SANAP, J.)

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