



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

CRIMINAL REVISION APPLICATION NO. 183 OF 2023

(Amolkumar @ Anmol s/o Ashok Tiwari Vs. Ujwala Amolkumar @ Anmol Tiwari (Ujwala Dhannu Sakhare (Maiden Name) & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.J. Thakkar, Advocate for the applicant.

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CORAM : ANIL L. PANSARE, J.
DECEMBER 7, 2023.

By the present revision, the applicant has questioned the legality, correctness and propriety of the order dated 6/1/2023 passed by the learned Family Court, Buldhana in Misc. Criminal Case No. 3/2022.

2] The applicant – husband, who is working in Indian Army, has filed an application to set aside the ex parte order dated 27/6/2022 passed by the learned Family Court, Buldhana in a petition bearing No. E-5/2020, which was filed by the non-applicants under Section 125 of the Code of Criminal Procedure, 1973 (for short “the Code”). The grounds put forth by the applicant for setting aside the ex parte order were that he had engaged/appointed an Advocate Shri G.D. Wantaram. According to the applicant, the Advocate did not inform him about the date to attend the Court. Resultantly, the Court proceeded against the applicant ex parte. The applicant has come-up with a case that he had no knowledge of progress of case and ex parte order came to be passed. The non-applicants have then filed execution

petition for enforcement of the maintenance order. The applicant came to know from the neighbors that police personnel were searching him. He then made contact with Advocate Shri G.D. Wantaram. The said Advocate informed that he has been appointed as Judicial Magistrate First Class.

3] The learned Advocate for the applicant has relied upon the judgments of the Orissa High Court and the Madhya Pradesh High Court to buttress his submission that the ex parte order passed under Section 125 of the Code can be recalled by the Magistrate. The Magistrate took note of the said judgments but found that the applicant has never engaged Advocate Shri G.D. Wantaram. The Family Court noted that Advocate Shri Ajay Dinode had filed the memorandum of appearance in the year 2020 but thereafter did not file Vakalatnama. The Family Court further noted that Advocate Shri Vijay Adwe was appearing in the said matter and not Advocate Shri G.D. Wantaram.

4] The learned Advocate for the applicant has invited my attention to the Vakalatnama filed by Advocate Shri Vijay Adwe. He had filed Vakalatnama for the non-applicants and not the applicant herein.

5] Nonetheless, the finding of the Family Court that Advocate Shri G.D. Wantaram has not filed Vakalatnama for the applicant is found to be correct. If that be so, the case of the applicant that he had engaged Advocate Shri G.D. Wantaram and the Advocate did not apprise him of the status of the proceedings before the

Family Court is unacceptable. In that sense, the applicant failed to justify his absence before the Family Court.

6] Be that as it may, the Family Court has vide order dated 27/6/2022 passed in petition no. E-5/2020, which was filed by the non-applicants, directed the applicant to pay monthly maintenance of Rs.5,000/- to non-applicant no.1 – wife and Rs.3,000/- to non-applicant no.2 – daughter. The applicant is working in Indian Army. When asked, the learned Advocate for the applicant could not answer as to what is the salary of the applicant. Thus, it appears that the applicant is shirking his duty to pay maintenance by not disclosing material facts to his Advocate.

7] The Family Court has in its judgment and order noted that the applicant is working in Indian Army. Non-applicant no.1 – wife deposed that the applicant – husband is earning Rs.86,000/- per month. The Family Court did not blindly believe the statement for the reason that documentary evidence was not tendered. The Family Court, however, took judicial note of the fact that the applicant is working in Indian Army and must be getting reasonable salary and accordingly granted maintenance as stated above. I do not find any error in the said approach. The amount of maintenance granted by the Family Court is minimum what the husband, who is working in Indian Army, should pay to his wife and minor child as maintenance charges.

8] Put all together, the applicant failed to make out a case for setting aside the ex parte order

passed by the Family Court. Even otherwise, what appears from the ex parte order is the reasonable approach of the Family Court. The applicant is duty bound to maintain his wife and minor child.

9] With the above observations, the application is rejected.

(ANIL L. PANSARE, J.)

Sumit