



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

70 CRIMINAL WRIT PETITION NO. 106 OF 2024

RAHUL BHAVARLAL CHORDIYA
VERSUS
KOMAL W/O RAHUL CHORDIYA AND OTHERS

...
Advocate for Petitioner : Mr. H. V. Tungar h/f Mr. Pawar H. B.
Advocate for Respondent No.1 : Mr. Tambe Rahul A.
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CORAM : S. G. MEHARE, J.
DATE : 29.07.2024

PER COURT :-

1. Heard the learned counsel for the petitioner and learned counsel for respondent No.1.

2. The petitioner/husband has impugned the order dated 02.11.2023 of the learned Judicial Magistrate First Class. By the impugned order, the petitioner was directed to pay the arrears of interim maintenance within two months without fail, failing which, the defence will be struck off.

3. Learned counsel for the petitioner would submit that the petition was filed in 2020. However, suddenly, in 2023, the Court, on her application, directed the petitioner to pay interim maintenance of Rs.20,000/- from the date of application. That

order has been impugned before the Sessions Court, and that petition is pending. The wife has also filed an application for enhancement of interim maintenance.

4. Learned counsel for the petitioner submits that he bonafide deposited Rs.4,34,000/- till date against the arrears of Rs.6,00,000/-. He regularly pays the interim maintenance of Rs.20,000/- per month. The petitioner submits that there was no deliberate delay in paying the arrears, but since it was considered for the date of application, it was a heavy burden for the petitioner to clear the huge arrears. The petitioner is ready to continue to pay Rs.20,000/- by way of interim maintenance. The harsh order to strike off the defence could not have been passed, considering his bona fide. He submits that the petitioner be allowed to proceed with the matter. If the matter is unnecessarily stalled for arrears, further arrears of interim maintenance may be increased. The petitioner has a good case on merit. Hence, the petition may be allowed.

5. Learned counsel for contesting respondent submits that when the application of struck off the defence was filed, the petitioner was in arrears of Rs.6,00,000/-. He is still in arrears of around Rs.4,00,000/- and more. The petitioner has avoided

the summons for many years. Hence, the petition was pending without progress. He did not obey the order of interim maintenance. The First Appellate Court did not stay the order of interim maintenance. The petitioner has a handsome income of Rs.7,00,000/- per year. He is the Proprietor of Food Plaza. There is nothing before the Court to show that he was unable to pay the interim maintenance. The impugned order is legal and proper.

6. Perused the impugned order and considered the facts submitted by the respective learned counsels. Since the interim maintenance order is still running against the petitioner, he is bound to obey it. However, the petitioner had shown bonafide in depositing a certain amount. He also claimed that he pays interim maintenance regularly. There are some grounds to consider that the interim maintenance was directed to be paid from the date of the application. So naturally, it may be burdensome for him to clear the arrears at the earliest.

7. Considering the facts of the case, the financial condition of the petitioner, and speedy relief to both side, it would not be inappropriate to grant some relief to the petitioner on some condition. Considering the income of the petitioner, three

months are granted to him to clear the arrears of maintenance as of today within a specific time. Hence, in order to make justice, the following order is passed :

ORDER

- (i) Writ petition is allowed.
- (ii) The order of the learned Judicial Magistrate First Class, Court No.1, Shrirampur, passed below Exh. 51, dated 02.11.2023, in Criminal M.A. No.483 of 2020, stands quashed and set aside on the condition that the petitioner should clear the arrears of maintenance within three months from today, either in one or two installments as per his choice and continue to pay the interim maintenance of Rs.20,000/- till the petition is decided on merit.
- (iii) If the arrears are not clear within three months, the impugned order will be restored automatically.
- (iv) Either of the parties should not protract the trial. An endeavour be made to decide the petition at the earliest.

(S. G. MEHARE, J.)

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vmk/-