



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

45 CRIMINAL WRIT PETITION NO. 425 OF 2023

Atul Pundlik Chaudhari

..PETITIONER

-VERSUS-

Priti W/o Atul Chaudhari
and others.

..RESPONDENTS

Advocate for petitioner : Mr. Hemantrao P. Deshmukh

Advocate for the respondents : Mr. Tushar Shinde h/f Mr. C.K. Shinde

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 10th June, 2024.

P.C.:

1. By this writ petition, the petitioner has challenged the order passed below Exhibit-15 dated 09.02.2022 by the Judicial Magistrate, First Class, Yawal in Criminal Misc. Application No.163 of 2021.

2. It is contention of the learned counsel for the petitioner that petitioner is the husband of respondent no.1 and father of respondent nos.2 and 3. Respondent no.1 has filed application for getting maintenance before the Judicial Magistrate, First Class, Yawal. The learned counsel further submitted that the petitioner had filed application before the Civil Judge, Senior Division, Bhusawal for getting custody of respondent nos.2 and 3. The petitioner filed application before the Judicial Magistrate, First Class, Yawal to stay the proceedings till the decision of custody application filed by the

petitioner but the said application is rejected without giving proper reasons. The learned counsel further submitted that the maintenance application is filed by the respondent no.1 for herself and for the respondent nos.2 and 3. The petitioner is seeking custody of respondent nos.2 and 3. If the petitioner gets the custody of respondent nos.2 and 3, there is no question of giving maintenance to respondent nos.2 and 3, but this fact is not considered by the learned Judicial Magistrate, First Class, Yawal and has rejected the application. Hence, the learned counsel requested to allow the writ petition.

3. It is the contention of the learned counsel for respondent nos.1 to 3 that mere filing application for getting custody can not be a ground to stay the proceedings of maintenance application as respondent no.1 is taking care of respondent nos.2 and 3, who are minors. The petitioner is husband of respondent no.1 and it is his responsibility to provide maintenance to the respondents. Only to prolong the matter, the petitioner had filed application for getting custody of respondent nos.2 and 3 after filing the maintenance application. The trial Court has considered all the aspects and has passed the reasoned order. Hence, the learned counsel requested to dismiss the petition.

4. I have heard both the learned counsel. Perused the record.

5. In the impugned order, the trial Court has observed that the respondent no.1 has filed her affidavit of evidence. The petitioner herein did not take cross-examination of respondent no.1 and without

taking cross-examination, the application for staying the proceedings was filed. The trial Court further observed that the petitioner had filed application for getting custody of respondent nos.2 and 3 at Bhusawal whereas the maintenance application is pending at Yawal. Mere pendency of the application can not be a ground to stay the proceedings. On that ground the trial Court has rejected the said application. I do not find infirmity in it. In my view, the maintenance application filed by respondent no.1 was at the stage of evidence. Getting custody of child is different issue than paying maintenance. It appears that to prolong the matter, the petitioner had filed application for staying the proceedings.

6. In view of the above, I pass the following order :-

ORDER

(i) The writ petition is dismissed.

[SHIVKUMAR DIGE, J.]