



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO. 1391 OF 2023
IN REVN/80/2023 WITH
CRIMINAL REVISION APPLICATION NO. 80 OF 2023

SHAIKH AFSAR S/O SHAIKH EQBAL
VERSUS
TASLIM W/O SHAIKH AFSAR AND OTHERS

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Advocate for Applicant : Mr. Shaikh Mujtaba Gulam Mustafa.
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CORAM : S. G. MEHARE, J.
DATE : 12.07.2024

PER COURT :-

1. Heard the learned counsel for the applicant. None present for the respondent/wife.
2. The applicant had impugned the order of the Judge, Family Court, Jalna passed in Petition No.E-222/2019, dated 24.05.2019.
3. The learned Judge, Family Court granted maintenance of Rs.1500/- to the wife and Rs.1,000/- each to the children.
4. Learned counsel for the applicant would submit that initially the matter was pending before the Judicial Magistrate First Class. After recording the evidence of the wife, the matter was transferred to the Family Court. The applicant was

unaware of this fact. Therefore, the matter was decided *ex parte* without granting him an opportunity to lead evidence.

5. It is submitted that the applicant has good case on merit. There was no substance in the application. He never refused and neglected to maintain the wife and children. She left the home at her own accord. Her material admissions have not been correctly appreciated, since no arguments were advanced. However, as per the impugned order, he has cleared the arrears of maintenance and he is regularly paying the maintenance as per the impugned order. The executing Court had issued arrest warrant against him. Subsequently, he had deposited the maintenance amount and he was released. The small amount of arrears is remained to be paid. Now, he has been released. Sufficient opportunity was granted to the respondent, but neither they or their learned counsel remain present. Learned counsel for the applicant states that opportunity of being heard should be granted. Hence, writ petition may be allowed.

6. Perused the impugned judgment and order. It has been observed in the impugned order that the matter was transferred to the Family Court. Since first date, the parties were absent and their counsels were also absent. The matter was adjourned from time to time. Therefore, the matter was

kept for judgment on merit. As it is not proper to keep the matter pending months together.

7. Normally, in the situation of transfer of matters to the Family Court, the Court was expected to issue notice to the concerned parties suo motu. In this matter after the transfer, neither the petitioner nor the respondent appeared in the matter and the learned Judge decide the matter on the basis of material before him. This seems to be an incorrect approach. Hearing should be granted to both sides.

8. Hence, the impugned judgment and order of the Judge, Family Court Jalna, passed in petition No.E-222 of 2019, dated 24.05.2019 is quashed and set aside. Provided, the applicant should clear the arrears of maintenance within three months from today and continue to pay the amount of maintenance granted as per the impugned order.

9. The matter is remitted to the Family Court, Jalna for fresh trial by granting an opportunity to both sides to lead the evidence and advance the arguments.

10. The applicant shall appear before the Family Court, Jalna on 01.08.2024. Then, the Family Court should issue notice to the present respondent i.e. original applicant at the Court

motion and proceed to decide the matter on merits. The matter should be disposed of within six (6) months from the date of appearance of both parties.

11. In the above terms, revision application stands disposed of.

12. No order as to costs.

13. Criminal Application No.1391 of 2023 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-