



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Application No. 3495 Of 2024
in
Writ Petition No. 13266 Of 2023

Deepak Dilip Munshi

...Applicant

VERSUS

Aparna Deepak Munshi

...Respondent

...

Advocate for Applicant : Mr. Hemant Surve

Advocate for Respondent : Mr. B.B. Kulkarni

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 19th APRIL 2024

PER COURT :

1. Heard both the sides. Learned Counsel for the respondent tenders on record affidavit-in-reply.

2. Applicant seeks recalling of order dated 06.12.2023 and to restore order of 25.10.2023.

3. Applicant has filed petition challenging order of interim maintenance passed by the learned Judge of the Family Court. On 25.10.2023 ad-interim relief was granted by reasoned order on certain conditions. The applicant was directed to deposit an amount of Rs.3,00,000/- (Rupees Three Lakhs) within a period of four weeks in the Family Court, Aurangabad and further

directed to pay interim maintenance at the rate of Rs.30,000/- (Rupees Thirty Thousand) per month.

4. The matter was posted on 06.12.2023, but could not reach. Learned Counsel for the respondent mentioned the matter and informed that the amount of Rs.3,00,000/- (Rupees Three Lakhs) which was directed to deposit vide order dated 25.10.2023, was not deposited till that date. This Court, therefore, passed order vacating interim relief for non-compliance of the earlier order.

5. Learned Counsel for the applicant points out that the amount was deposited by cheque dated 23.11.2023. As regular Presiding Officer was not available, matter was assigned to In-charge/Judicial Officer. With the permission of the In-charge/Judicial Officer, amount was deposited and the receipt thereof was given on 01.12.2023 after realization of the amount. Learned Counsel submits that on 06.12.2023 an incorrect statement was made and interim orders got vacated. He would further submit that he was not informed by the learned Counsel for the respondent regarding mentioning of the matter. He would further submit that there was compliance on the order passed on 25.12.2023.

6. It is further pointed out that the statement was being made by the learned Counsel for respondent on 06.12.2023 on

the basis of instructions. He would further point out from the Roznama of the Family Court that on 23.11.2023, lawyer representing respondent/applicant was present. It is further submitted that though the matter was mentioned on 06.12.2023, learned Counsel for the respondent did not file his Vakalatnama. On this grounds, it is prayed that order dated 06.12.2023 be recalled.

7. Learned Counsel for the respondent opposes the submission on the basis of affidavit-in-reply. It is vehemently submitted that the time line given by order dated 25.10.2023 has not been followed. The applicant did not intimate respondent or his lawyer about the depositing of amount on 23.11.2023. There was no intimation of the application Exhibit-58 and order passed thereon. He would further submit that the Civil Application has become infructuous because ad-interim orders stood vacated for non-compliance of the conditions stipulated therein. He would point out Roznama of the Family Court indicating that on 23.11.2023, respondent was shown to be absent.

8. It is further submitted by the learned Counsel that after 23.11.2023, next date was 08.12.2023. The respondent or her Counsel had no knowledge of depositing of amount. He would further submit that there was no system to track the activities on a particular date. He would submit that he was having

instructions to appear on 06.12.2023, though Vakalatnama could not be filed on or prior to that date. It is being submitted that while allowing application Exhibit-58, learned In-charge/Presiding Officer kept issue of limitation open. He would therefore pray to reject the application.

9. I have considered rival submissions of the parties. The conditional order was passed on 25.10.2023 directing applicant to deposit Rs.3,00,000/- (Rupees Three Lakhs) towards arrears of maintenance within a period of four weeks. The time was to expire on 22.11.2023. No endeavour has been made to deposit amount prior to 22.11.2023. When on 23.11.2023, applicant intended to deposit amount by cheque, Presiding Officer was not available. Therefore, application Exhibit-58 was submitted before the In-charge/Presiding Officer and by soliciting orders cheque was deposited. It appears to have been realized on 01.12.2023. However fact remains that amount of Rs.3,00,000/- (Rupees Three Lakhs) was deposited on or above 01.12.2023, albeit belatedly.

10. When the matter was mentioned, as it could not reach on 06.12.2023, amount was already deposited. However on 06.12.2023, it was represented to this Court that amount has not been deposited and there was total non-compliance. In my view this is incorrect statement. Relying upon the statement of learned Counsel for the respondent, I proceeded to pass order

on 06.12.2023 declaring that the conditional interim relief ceased to operate. It was incumbent upon learned Counsel for the respondent to bring on record the actual facts that amount was deposited belatedly. Therefore I find merit in the submissions of learned Counsel for the applicant.

11. So far as the objection of the applicant as on 06.12.2023, Vakalatnama was not filed by the learned Counsel for the respondent and he had no power on 06.12.2023 is concerned, it would be too technical to infer that Counsel for the respondent had no authority to represent. There is no reason to infer that on 06.12.2023, he was not being instructed by his client to appear before the Court or to mention. The contention of the applicant in this regard cannot be countenanced.

12. I do not propose to enter into factual aspect of the matter regarding intimation of the depositing of the amount to the respondent up to 08.12.2023 or the submission in respect of minutes of the Roznama recorded on 23.11.2023.

13. For the reasons stated above, I am of the considered view that a case is made out to recall order dated 06.12.2023. It is a mistake apparent on the face of the record which is actuated because of the misrepresentation. The Writ Petition is assigned to the different bench. The parties would be at liberty to approach learned Judge soliciting further orders in the matter.

14. It is clarified that this Court has not expressed any aspersions on the intention or conduct of the lawyers representing parties. Possibility of cropping up an error, inadvertently, cannot be ruled out.

15. For the reasons stated herein above, the order dated 06.12.2023 is recalled and the interim orders passed on 25.10.2023 are restored.

**SHAILESH P. BRAHME
JUDGE**

Najeeb..