



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

Writ Petition No. 4378 of 2023

[Shri Pramod s/o Gajanan Devghare ..vs.. Smt. Pallavi Pramod Devghare]

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

Court's or Judge's orders

Mr. Muzammil Husain, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 27-06-2024

None present for the respondent.

2. On 18-7-2023, following order was passed.

"1. The petition challenges the order dated 11/05/2022 (Exh.44), by which the defence of the petitioner has been struck off due to non-payment of arrears of maintenance.

2. Mr. Muzammil Husain, learned counsel for the petitioner, upon instructions, makes a statement that the total maintenance, as per the rate granted as of date is Rs.3,76,000/-, out of which Rs.88,000/- already stood paid. He makes a statement that Rs.1,00,000/- shall be paid within two days from today and the balance of Rs.1,88,000/- shall be paid by four installments, each installment payable bi-monthly. It is further contended that since the matter is required to be decided on merits, the defence of the petitioner may not be struck off.

3. Issue notice for final disposal to the respondent, returnable on 07/08/2023.

4. On the condition of payment of Rs.1,00,000/- within two days from today in this Court and further payment of balance of Rs.1,88,000/- by four bi-monthly installments, starting from today, the further proceedings in

Petition No. A-381/2014 shall stand stayed till the returnable date.

5. It is made clear that if the directions regarding payment of arrears of maintenance above, are not followed, the interim order, granted, shall stand automatically vacated without reference to the Court.

6. The petitioner shall serve the respondent by all modes of service permissible in law including Hamdast.”

3. Learned counsel for the petitioner submits that arrears of maintenance has been paid in terms of aforesaid order. Accordingly, he made a request to set aside the order impugned by which the petitioner's defence has been struck off by the Family Court.

4. Learned counsel for the petitioner makes further statement that pending proceedings before the Family Court, the petitioner will regularly deposit the amount of maintenance and also shall attend the proceedings diligently and will not seek unnecessary adjournment.

5. On the strength of aforesaid statement and in view of the fact that arrears of maintenance has been paid, in my view, it will be in the interest of justice to permit the petitioner to defend his case. In view thereof, the impugned order will have to be set aside and stands set aside accordingly with a rider that single default by the petitioner as regards payment of monthly maintenance would stand this order recalled, meaning thereby, that the order impugned shall be restored. In other words, the default at the hands of petitioner to pay monthly

maintenance periodically would forfeit his right to defend as his defence will struck off.

6. With the above observations, order impugned is set aside.

7. Family Court, Nagpur shall decide the petition in accordance with law.

8. The petitioner shall appear before the trial Court on scheduled dates.

(Anil L. Pansare, J.)

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