



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 456 OF 2024

PETITIONER : Mr. Harkirat Singh Mann, Aged about
46 Years, Occ. Nil, R/o. House No.
143/1, Hargovingpura, Opp.
Gurudwara, Tehsil, Jargaon, Dist.
Ludhiana, Punjab.

//VERSUS//

RESPONDENTS : 1. Mrs. Pritpal Kaur W/o. Harkirat Singh
Mann, Aged about 44 Years, Occ:
Housewife.

2. Ku. Shableen Kaur D/o. Harkirat
Singh Mann, Aged about 18 Years,
Occ. Student.

3. Ku. Harsimran Kaur D/o. Harkirat
Singh Mann, Aged about 12 Years,
Occ. Student.

(Respondent No.3 is minor, through
her mother Respondent No.1.)

All Respondent Nos.1 to 3 R/o. 150,
Gurunanakpura, Nagpur.

Mr. M. Y. Wadodkar, Advocate for the Petitioner.
Ms. Falguni Badani, Advocate for the Respondents.

CORAM : G. A. SANAP, J.
DATED : 26th AUGUST, 2024.

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned advocates for the parties.

02] In this criminal writ petition, the petitioner has questioned the correctness of the order dated 22nd February, 2023, passed below Exh.25 in Petition No. ER-173/2018 by the learned Judge, Family Court No.3, Nagpur, whereby the learned Judge rejected the application at Exh.25 made by the petitioner for quashing the execution proceeding.

03] It is the case of the petitioner that the execution application i.e. Petition No. ER-173/2018 has been filed for recovery of interim maintenance awarded in favour of the respondents pursuant to the order dated 14th February, 2017 w.e.f. effect from 27th January, 2016 till disposal of the main petition. It is stated that the main petition has been disposed of on 11th October, 2018. The execution application was filed for recovery of interim maintenance. It was not maintainable. The application has been finally decided.

04] In the said application, the reply was filed by the respondents. They have contended that the order of interim maintenance has not either been modified or the main application for maintenance has not been rejected. It is further pointed out that the execution proceeding for recovery of interim maintenance was filed prior to the decision of the main application *vide* order dated 11th October, 2018.

05] The learned Judge of the Family Court, on consideration of the facts and the relevant material, recorded a finding that, by final order dated 11th October, 2018, the maintenance has been awarded to the wife until she remarries and to the younger daughter till she attains the majority. The learned Judge found that, in view of the final order, the execution proceeding is main tenable.

06] I have heard Mr. M. Y. Wadodkar, learned advocate for the petitioner and Ms. Falguni Badani, learned advocate for the Respondents. Perused the record and proceedings.

07] Learned advocate for the petitioner, relying upon two decisions in the cases of *Ramesh Ramaji Akre Vs. Smt. Mangalabai*

wd/o. Pralhad and Ors. [2002(3) Mh.L.J. 579] and Gwaldas Shivkisanji Lakhota Vs. Bapurao Arjunji Bandabuche [2007(4) Mh.L.J. 698], submitted that when the main lis comes to an end, all interim orders merged into the final order. Learned advocate submitted that the order of interim maintenance has merged into the final and therefore independent proceeding for recovery of interim maintenance pursuant to the earlier order was not maintainable.

08] Learned advocate for the respondents submitted that the doctrine of merger in the factual situation would operate against the petitioner. Learned advocate submitted that, had the main application been dismissed, the argument on the ground of merger would have some substance.

09] I have perused the record and proceedings. I have also gone through the decisions relied upon by the learned advocate for the petitioner. There is hardly any dispute about the fact that when the main lis comes to an end, all interim orders merged into the final order. It is held in the decisions (supra) that once interim order merged into the final order, the interim order cannot be

executed. It is observed that when the suit itself is dismissed finally, the interim orders passed during the pendency of the suit are merged into the final order and therefore cannot be executed. In this case, the doctrine of merger would operate against the petitioner.

10] The interim maintenance was granted @ Rs.5,000/- per month each to the respondents. The learned Judge of the Family Court has finally granted the interim maintenance to the wife and the younger daughter. By final order, the maintenance has not been granted to the elder daughter, because she had attained the majority. It is further seen that the execution proceeding for recovery of interim maintenance was filed on 16.05.2018. The main proceeding has been finally decided on 11.10.2018. The execution application was already pending for recovery of the interim maintenance. In my view, there would be no bar as such to continue the said execution application. In any case, the interim order being merged into the final order, the respondents have a right to apply for execution of the same.

11] As far as the elder daughter is concerned, the application made by the petitioner before the Family Court is silent

about the exact date of her attaining the majority. It is, therefore, not clear whether she has attained the majority on or before filing the execution application on 16th May, 2018 or thereafter. However, it appears that on 11th October, 2018, she had attained the majority, and therefore her prayer for maintenance was not allowed. In the facts and circumstances, the petitioner was required to clarify this position in his application. The application is silent about it. As far as the elder daughter is concerned, even after rejection of this petition, he can make a fresh application in the execution proceeding and point out all the relevant facts, namely, the date on which she attained the majority, etc.

12] In view of this, I do not see any substance in this petition. The petition is accordingly **dismissed**. Rule is discharged.

(G. A. SANAP, J.)

Vijay