



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

FAMILY COURT APPEAL NO.28 OF 2023

Naresh Mohanlal Nandeshwar Vs. Sau. Ratnaprabha w/o Naresh Nandeshwar

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

Court's or Judge's orders.

Shri Ram Karode, Advocate for appellant.

CORAM : SMT. M.S. JAWALKAR &
M.W. CHANDWANI, JJ.
DATE : 19.12.2024.

Present appeal is filed being aggrieved by the order 12.06.2023 passed by the learned Judge, Family Court No.2, Nagpur in Petition No.A-659/2016.

2. Perusal of impugned order shows that the matter was kept for cross-examination of the appellant. It is observed in the impugned order that the appellant is avoiding cross-examination for more than one year. He was directed to clear the arrears of maintenance and vide order dated 08.03.2023 he was warned that if the arrears of maintenance is not cleared before next date of hearing the petition shall be dismissed and also directed to remain present for cross-examination. However, from the impugned order, it appears that the appellant was present at 11.20 am. It is his contention that his advocate did not turn up till 4.40 pm. The respondent and her advocate were present since morning for cross-examination. The learned Judge dismissed the petition by observing that the appellant is not ready to face the cross-examination.

3. In spite of service of notice and grant of opportunity to appear in the matter, the respondent has chosen not to appear.

4. In our considered opinion, the learned Judge, Family Court ought not to have dismissed the petition specifically when the appellant was present before the Court and in absence of his advocate he could not face the cross-examination, however, it is not the case that he was avoiding to face the cross-examination. As such, this is a fit case to remit the matter back by setting aside the impugned order for cross-examination of the appellant/petitioner. However, we make it clear that the appellant/petitioner shall appear before the Family Court on 02.01.2025 and shall also clear the arrears of maintenance by that time.

5. The learned Judge, Family Court No.2, Nagpur to ensure that arrears of maintenance are cleared by the appellant/petitioner and then only proceed in the matter. The learned Judge is at liberty to impose the costs, if the appellant/petitioner fails to deposit the arrears of maintenance. As such, the impugned order dated 12.06.2023 passed by the learned Judge, Family Court No.2, Nagpur in Petition No.A-659/2016 is hereby quashed and set aside.

6. Parties to remain present before the Family Court No.2, Nagpur on 02.01.2025.

7. The appeal is disposed of in above terms.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)

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