



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

Writ Petition No. 7526 of 2023

[Sandesh S/o. Shrihari Phopre ..vs.. Mrs. Priyasheeela W/o. Sandesh Phopre]

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

Court's or Judge's orders

Mr. A. D. Dangore, Advocate for the petitioner
Mr. K. J. Tople, Advocate instructed by Mr. Ravi Dambhare, Advocate for
the respondent

CORAM : ANIL L. PANSARE J.

DATED : 09-09-2024

The petitioner – husband is aggrieved by order dated 7-8-2023 passed by the Family Court, Nagpur in Petition No. A-1063/2019. The petitioner has filed the proceedings under Section 9 of the Hindu Marriage Act, 1955. The respondent – wife has filed application under Section 24 of the said Act for grant of maintenance. The Family Court was pleased to allow the application and directed the petitioner to pay Rs. 5,000/- per month as maintenance to her *pendente lite*.

2. My attention is invited to the order passed by the Family Court wherein learned Judge referred to the order passed by the Additional Sessions Judge, Bhandara modifying the order passed by the Judicial Magistrate First Class, Mohadi wherein the Additional Sessions Judge has set aside the order of the Magistrate granting respondent Rs. 15,000/- per month maintenance under Section 125 of the Code of Criminal Procedure. The Additional Sessions Judge, however, maintained the Magistrate's order granting maintenance to the extent of Rs. 10,000/- per month to the daughter.

3. The order granting maintenance to the respondent was rejected mainly on two grounds, firstly that she filed application within 17 days of separation and secondly, she is highly qualified and possesses a degree in Bachelor of Science and Bachelor of Education. The first appellate Court has further observed that she has not placed on record any material to show that she is unable to maintain herself or that she made any efforts to seek employment and despite efforts, she did not succeed. In other words, she did not explain the efforts made by her to secure employment.

4. The Sessions Court, however, thought it proper to direct the petitioner to pay Rs. 5,000/- per month to the respondent, as a stop gap arrangement, only till she files fresh application disclosing the efforts made by her to secure employment.

5. The Family Court, taking clue from the aforesaid stop-gap arrangement made by the first appellate Court, has granted maintenance of Rs. 5,000/- per month *pendente lite*. The Family Court has not considered the aspect of potential of the respondent to secure employment or to maintain herself. Having not done so, the order impugned is liable to be quashed and set aside.

6. Accordingly, writ petition is partly allowed. Order dated 7-8-2023 passed by Family Court No. 4, Nagpur below Exhibit 14 in Petition No. A-1063/2019 is quashed and set aside. Application, Exhibit 14 is remanded back to the Family Court for consideration afresh in the light of the order passed by the Additional

Sessions Judge, Bhandara as also this Court dated 5-12-2023 in Criminal Writ Petition No. 168/2023 (*Sau. Priyasheela Sandesh Phopre Vs. Sandesh Shrihari Phopre*) upholding the order of the Sessions Court.

7. Application, Exhibit 14, accordingly, is restored on the file of the Family Court, Nagpur.
8. The parties shall appear on the scheduled date.
9. Writ petition is disposed of in above terms.

(Anil L. Pansare, J.)

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