



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

CRIMINAL REVISION APPLICATION NO.218 OF 2023

Milind alias Milindra S/o Shriram Gokhale,
Aged 47 years, Occu: Service,
R/o: Plot No.92, Behind Chhabileshwar
Hanuman Mandir, Aradhana Nagar,
Nagpur.
Presently R/o. C/o. Pradeep S/o.
Shriramji Gokhale, Plot No.8, Yogeshwar
Nagar, Nagpur.

....APPLICANT

...V E R S U S...

1. Smita W/o Milind Gokhale,
Aged 40 years, Occu: Private,
2. Ku. Rushali D/o Milind Gokhale
Aged 16 years, Occu: Education
3. Ku. Khiyati D/o Milind Gokhale
Aged 13 years, Occu: Education

Both non-applicant nos.2 and 3 are
minor through natural guardian mother
i.e. non-applicant no.1

R/o: C/o. Sevakdas Dayadas Kohale,
Plot No.23, Vijayanand Society, Behind
Tirupati Urban Bank, Narendra Nagar,
Nagpur.

...NON-APPLICANTS

Shri V. N. Mate, Advocate for applicant.
Shri N.B. Bargat, Advocate for non-applicants.

CORAM:- M.W. CHANDWANI, J.
DATED :- 08.04.2024.

ORAL JUDGMENT:

. Leave to add daughters as non-applicant nos.2 and 3
is granted. The amendment be carried out forthwith.

2. The learned counsel appearing for non-applicant no.1 waives notice on behalf of non-applicant nos.2 and 3.

3. Heard. Admit.

4. It is not necessary to go into the matrix of the case in detail, suffice to say that the non-applicants have filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the applicant. Alongwith said application, an application for interim maintenance was also filed. The applicant did not appear in the said matter therefore the learned Judicial Magistrate First Class proceeded *ex parte* and passed the impugned order directing the applicant to pay interim maintenance of Rs.10,000/- per month to the non-applicant no.1 and Rs.5,000/- per month each to the non-applicant nos.2 and 3.

5. The contention is that the applicant has not been served in the matter therefore he could not appear before the learned Judicial Magistrate First Class, Nagpur.

6. Perusal of record shows that the notice was sent to the applicant through RPAD on the address of office of DMR, Central Railway, Nagpur, which was returned back with an

endorsement unclaimed. The trial Court treated it as service to the applicant. An application came to be filed before the learned Judicial Magistrate First Class for setting aside *ex parte* order, which is not decided till date. Meanwhile, the applicant filed an appeal before the learned Additional Sessions Judge, Nagpur, which came to be rejected on the ground that in other matter filed by the non-applicant, the applicant was served on the same address, therefore, the learned Additional Sessions Judge also treated the applicant is served and dismissed the appeal.

7. The contention is that in other proceedings the applicant was served on the residential address of the applicant. Perusal of notice issued by the Family Court in other proceedings shows that it was issued on the residential address of the applicant. Even on the execution of interim order notice is also issued on the residential address of the applicant therefore I find substance in the argument of the learned counsel for the applicant that he did not receive any intimation from the postal department regarding notice issued in the proceedings.

8. Be that as it may, the learned counsel for the non-applicant also concedes that matter shall be heard on merits.

Hence, the impugned order does not stand and is required to be set aside. Resultantly, the revision application is allowed. The matter is remanded back to the trial Court for deciding application for interim maintenance afresh after hearing the present applicant in the matter.

9. It is informed by the learned counsel for the applicant that the applicant is paying Rs.14,000/- per month to the non-applicant. He shall continue to pay Rs.15,000/- per month in this proceedings till the application is decided on merits.

10. The applicant shall file reply on next date of hearing.

11. The trial Court shall decide the said application expeditiously and preferably within one month thereafter.

With this, the application stands disposed of.

JUDGE

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