



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

CRIMINAL WRIT PETITION NO. 453 OF 2024

PURUSHOTTAM S/o KUSHANAND BHAGAT

VERSUS

SOMESHWARI W/o PURUSHOTTAM BHAGAT AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Harsha Mehta-Joshi, Advocate for the petitioner.
Mr. Satishkumar Soni, Advocate for respondent nos.1 and 2.

CORAM : G. A. SANAP, J.

DATE : SEPTEMBER 10, 2024.

1. By consent of the learned advocates for the parties, heard finally at the stage of admission itself.
2. In this petition, challenge is to the order dated 16.04.2024 passed by the learned Judge, Family Court, Amravati, whereby an application (Exh.34), made by the petitioner for setting aside the order of no-cross of respondent no.1, came to be rejected.
3. It is stated that the petitioner was regularly attending the proceedings. There was no failure on his part. The learned Judge of the Family Court, on his application, set aside the order of 'no-WS' and taken his written statement on record. It is stated that after filing the written statement, the matter was posted for cross-examination of respondent no.1/wife inasmuch as respondent no.1/wife had already filed the examination-in-chief on record.

4. It is stated that on 11.10.2023, the petitioner was present, however his advocate could not attend the Court. At his request, the matter was adjourned to 10.11.2023. On this date, the petitioner and his advocate were absent. A junior of the advocate for the petitioner made an application for adjournment. Learned Judge rejected the said application and treated the cross-examination on behalf of the petitioner as closed. On 27.02.2024, after engaging another advocate to represent the petitioner, an application was made for setting aside the 'no-cross' order. Learned Judge, by order dated 16.04.2024 rejected the said application. This order is challenged in this petition.

5. I have heard Ms. Harsha Mehta-Joshi, learned advocate for the petitioner and Mr. Satishkumar Soni, learned advocate for the respondents. Perused the record and proceedings.

6. Learned advocate for the respondents made a grievance that the interim maintenance @ Rs.3,500/- per month, awarded by the learned Judicial Magistrate, First Class, Amravati, in a proceeding filed under the Protection of Women from Domestic Violence Act, 2005, w.e.f. 24.07.2018, has not been paid. The petitioner is in arrears of maintenance. He be directed to pay the arrears. Learned advocate for the petitioner submits that the petitioner has paid the interim maintenance. However, it is submitted

that if he is in arrears, he may be directed to pay the same in two installments of 50% each.

7. The case before the Family Court is an application filed under Section 125 of the Code of Criminal Procedure by the respondents. It is now fixed for evidence of the petitioner. It is to be noted that adjudication of this application on merits is necessary to avoid multiplicity of the proceedings between the parties. If there is multiplicity of the proceedings on account of such an order, then it would definitely cause hardships to the respondents. The decision on the application for maintenance, made by the respondents, by way of full fledged trial would be necessary to safeguard their interest.

8. Perusal of the impugned order would show that the learned Judge of the Family Court has rejected the application (Exh.34) without recording any reason. The reason recorded is that the petitioner was present, but he could not satisfy the Court to set aside the order of 'no-cross'. It appears that the learned Judge has not dealt with the facts while rejecting the application. In the facts and circumstances, I am of the view that while deciding such an application, the approach of the Court must be pragmatic rather than pedantic. The party cannot be non-suited on technical ground. In the facts and circumstances, I am of the view that the impugned order deserves to be set aside.

The application (Exh.34) for setting aside the order of 'no-cross' on behalf of the petitioner, deserves to be set aside.

9. Accordingly, the Criminal Writ Petition is allowed.

10. The order dated 16.04.2024 passed by the learned Judge, Family Court, Amravati, on application (Exh.34), is set aside. As a result, the application (Exh.34) is allowed in terms of the prayer made therein.

11. The petitioner shall be granted an opportunity to cross-examine respondent no.1/wife.

12. However, the petitioner shall deposit 50% of the arrears of maintenance on or before the date fixed for cross-examination of respondent no.1 and the balance 50% of arrears be deposited within two months from the first date fixed for recording cross-examination of respondent no.1.

13. The petitioner and the respondents shall appear before the Family Court, Amravati on 07.10.2024.

14. The petitioner shall deposit 50% arrears on or before 07.10.2024 and balance 50% arrears within two months from 07.10.2024.

15. The petitioner shall produce before the Family Court, Amravati, the receipt of deposit of 50% of arrears in D.V.

Act proceeding. On production of such receipt, the petitioner shall be allowed to cross-examine respondent no.1.

16. If the petitioner fails to cross-examine respondent no.1 on 07.10.2024, then he shall not be entitled to cross-examine respondent no.1 in future.

17. Learned advocate for the petitioner submits that after passing the order of interim maintenance in the D.V. Act proceedings, there was re-union between the parties for a period of two years. The learned Judge, while passing the final order in a DV Act proceeding, shall take this fact into consideration and pass an appropriate order.

(G. A. SANAP, J.)

Diwale