



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

926 CRIMINAL WRIT PETITION NO. 1565 OF 2022

PARVEEN BANO DIVORCED W/O. ANSAR KHAN
VERSUS
ANSAR KHAN S/O. AKBAR KHAN AND ANOTHER

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Mr. G. R. Syed, Advocate for the Petitioner
Mr. M. P. Tripathi, Advocate for Respondent No.1

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 13.06.2025

ORAL ORDER :-

1. Rule. Rule made returnable forthwith. With the consent both the parties, it is heard finally at the stage of admission.

2. By the present petition under Article 227 of the Constitution of India, the petitioner takes exception to the judgment and order dated 28.07.2022 passed by the learned Sessions Judge, Parbhani in Criminal Revision Petition No.160 of 2018, whereby the judgment and order dated 01.04.2014 passed by the learned J.M.F.C. Purna, in Criminal Misc. Application No.9

of 2013 is set aside and remanded to the learned trial Court for fresh decision after giving an opportunity to both the parties to lead evidence.

3. Learned counsel for the petitioner canvassed that after service of notice in Criminal Misc. Application No.9 of 2013, the Respondent-husband was appeared in the matter through his counsel and filed his say. However, after the evidence closed Pursis filed by the Petitioner-wife, the Counsel for the respondent- husband filed no instructions Pursis. Therefore, the learned trial Court closed the evidence of the respondent husband. Ultimately, on 01.04.2014, the learned trial Court passed the judgment and directed the respondent husband to pay Rs.4,00,000/- towards reasonable and fair provision and maintenance amount under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. So also, amount of Rs.9,000/- was directed to be paid towards maintenance during Iddat period and amount of Rs.2,00,000/- was directed to be paid towards price of the gift articles.

4. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is not in dispute

that, after service of summons, the respondent husband duly appeared in the matter. He had filed reply at Exh.11. Thereafter, the petitioner wife filed evidence affidavit and also examined witnesses. The Respondent-husband though his counsel cross examined the petitioners witnesses, the Petitioner-wife filed evidence closure Pursis. The Respondent-husband failed to provide evidence. However, on 18.12.2014, the Counsel for the Respondent filed no instructions Pursis Exh.22. Therefore, the matter was proceeded without evidence of the non-applicant husband.

5. The learned counsel for the petitioner submits that there were no communication between the non-applicant husband and his counsel, for a period of four years. Therefore, the non-applicant husband could have been contacted with his counsel regularly and could have been made aware about progress of the matter. No doubt, there may be miscommunication between the respondent and his counsel. Ultimately, the trial Court proceeded the matter without evidence of the respondent husband.

6. It is well settled principle of law that, the litigant should not be suffered for the act of his counsel and proper opportunity to

lead evidence is required to be given to both the parties to defend their cause. However, in case in hand, the learned Revisional Court passed the impugned order considering the fact that, for want of communication, the respondent's counsel filed no instructions pursis. Ultimately, the matter was proceeded without evidence of the non-applicant. Therefore, the learned Revisional Court has passed the impugned order and set aside order dated 01.04.2014 passed by the learned trial Court and remanded the matter for fresh decision after providing opportunities to both the parties to lead their evidence.

7. No doubt, the petitioner wife cannot be suffered delay to receive monetary relief for negligence on part of the respondent husband. However, considering the principles of natural justice as well as to provide proper and sufficient opportunity to both the parties, I do not find any fault on the part of the learned revisional Court while passing the impugned order. However, in order to show *bona-fide* while prosecuting before the trial Court, it will be just and proper to direct the respondent husband to deposit Rs.75,000/- (Rupees Seventy Five Thousand), as security before the trial Court within a period of six weeks. If the said amount is deposited, the learned trial Court is directed to provide proper opportunities to both

the parties to lead evidence and to decide the matter as early as possible within a period of six months therefrom.

8. The respondent husband is hereby permitted to file additional affidavit to bring subsequent events on record within a period of four weeks from today, but deposit of Rs.75,000/- would be the pre-condition in respect of the trial. After the amount of Rs.75,000/- is deposited, the same shall be kept in fixed deposit in any nationalized bank for a period of one year. The applicant wife would not be entitled to withdraw the same till decision of the petition.

9. With the aforesaid directions, the writ petition is disposed off. Rule is made absolute in above terms.

[Y. G. KHOBRADE, J.]

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