

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10914 OF 2025

Jordache Willim Jude Desa Fernandes ...Petitioner

Versus

Bhavanna Beri ...Respondent

Mr. Akshay Kulkarni i/b Mr. Yogesh Agrawal, for the Petitioner.

Ms. Shirin Merchant, (through V. C.) a/w Mr. Mangesh Mane, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12th AUGUST 2025

P.C.:

1. Heard Mr. Kulkarni, learned Counsel appearing for the Petitioner and Ms. Merchant, learned Counsel appearing for the Respondent.

2. By the present Writ Petition challenge is to the legality and validity of the order dated 6th November 2024 passed by the learned Judge, Family Court, Pune, below Exhibit-1, by which defense of the Respondent has been struck off for non-compliance of the order passed below Exhibit-90.

3. By order dated 4th September 2024 passed below Exhibit-90, Respondent i.e. present Petitioner has been directed to clear all the arrears on or before the next date and proceed with the matter. It has been further directed that otherwise the order of striking off defense would be passed. The arrears which are mentioned in said order dated 4th September 2024 are concerning educational fees and other related

expenses as directed to be paid by order dated 26th October 2023 passed by the learned Judge, Family Court No.4, Pune, below Exhibit-69 and 72 in PA No.762 of 2021. The operative part of the said order dated 26th October 2023, reads as under:-

“1. Both the applications Exh.69 and 72 are hereby partly allowed.

2. The respondent-husband is directed to pay the half of the educational fees and other related expenses of daughter Miraana to the petitioner-wife for the period 2022-2023 and 2023-2024 and to continue it till the final decision of this petition.

3. The petitioner-wife is directed that to submit the details of educational expenses of daughter Miraana which she incurred for the year 2022-2023 and 2023-2024, upon which respondent-husband to pay half of that amount.

4. As per the clause No.2 of consent terms Exh.30, petitioner-wife is directed that instead of 2 hours, access of daughter Miraana for 4 hours be given to the respondent-husband.”

(Emphasis added)

4. On the earlier occasion, a statement was made that arrears towards educational fees and other related expenses of daughter are about Rs.1,83,808/-. Accordingly, the Petitioner i.e. husband has deposited in the account of Respondent-wife an amount of Rs.1,85,000/- today. At this stage, both the learned Counsel state that there are additional arrears of Rs.56,500/-.

5. Mr. Kulkarni, learned Counsel appearing for the Petitioner, on instructions of the Petitioner, states that the said amount of Rs.56,500/-

will be deposited by 20th September 2025 in the account of the Respondent. He further states that hereinafter the said educational fees and other related expenses of daughter will be paid as per the order dated 26th October 2023 regularly. Ms. Merchant, learned Counsel, on instructions of the Respondent states that the details of educational expenses will be supplied to the Petitioner immediately as and when received from the Educational Institution. She also states that other related expenses of the daughter will be also communicated immediately. Mr. Kulkarni, learned Counsel, on instructions states that the same will be deposited in the account of the Respondent immediately. These statements are accepted as undertakings given to this Court.

6. The Division Bench of this Court in the case of ***Ramavatar Surajmal Modi v. Mulchand Surajmal Modi***¹ held as follows:-

*“...In our considered view, the provision in sub-rule (1) merely vests power in the Court to dismiss the suit or proceeding where the default is by the plaintiff and strike off the defence of the defendant where the defaulter is the defendant. It does not obligate to do so in every case of default. **This is further fortified by the provision contained in sub-rule (2) which gives a discretion to the Court that even after the order contemplated under the sub-rule (1) of Rule 11 has been passed, upon sufficient cause being shown by the party responsible for the default or contravention or breach and such party makes amend for the default or contravention or breach to the satisfaction of the Court, the Court may restore the suit or hear the defence on such terms and conditions it deems fit.** If the Court has power to restore the party to the same position even after the adverse order has been passed under sub-rule (1) of Rule 11 if the case*

¹ (2004) 2 MhLJ

is made out under sub-rule (2), the provision of sub-rule (1) has to be held to be directory and not imperative.”

(Emphasis added)

7. As the Petitioner has complied with the order dated 26th October 2023 and has undertaken to pay the remaining arrears by 20th September 2025, Ms. Merchant, learned Counsel appearing for the Respondent, on instructions states that the impugned order dated 6th November 2024 be quashed and set aside, by consent.

8. Accordingly, said impugned order dated 6th November 2024 is quashed and set aside. Resultantly, the defense of the Respondent is restored.

9. Both the learned Counsel state that the said PA No.762 of 2021 has reached up to the stage of Judgment. As the defense of the Petitioner is restored, the opportunity is required to be given to the Petitioner to file his Evidence Affidavit and also to the Respondent to conduct his cross-examination. The Petitioner will also at liberty to examine other witnesses, if any.

10. Ms. Merchant, learned Counsel states that the hearing of the said PA No.762 of 2021 be expedited. The learned concerned Judge of the Family Court is requested to dispose of PA No.762 of 2021 expeditiously.

11. The Writ Petition is disposed of in above terms, with no order as to costs.

[MADHAV J. JAMDAR, J.]