

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12523 OF 2023
WITH
INTERIM APPLICATION NO.7029 OF 2025

Virendra Radhakrushna Bobade	...Petitioner
<i>Versus</i>	
Anjali Virendra Bobade	...Respondent

Mr. Amey Deshpande, for the Petitioner.
Mr. Somnath Thengal, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED : 7th MAY 2025

P. C.:

1. Heard Mr. Amey Deshpande, learned Counsel appearing for the Petitioner and Mr. Somnath Thengal, learned Counsel appearing for the Respondent.
2. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the order dated 9th March 2021 passed by the learned 2nd Joint Civil Judge, Senior Division, Nashik below Exhibit-10 in Civil Miscellaneous Application No.6 of 2018.

3. Mr. Deshpande, learned Counsel submitted that the issue involved in the present Writ Petition is concerning the jurisdiction of the learned 2nd Joint Civil Judge, Senior Division, Nashik to decide Civil Miscellaneous Application No.6 of 2018. He states that the Family Court has been established for District Nashik on 23rd October 2010 and therefore, the application filed under Section 152 of the Code of Civil Procedure, 1908 (“CPC”) bearing Civil Miscellaneous Application No.6 of 2018 has to be decided by the learned Family Court and not by the learned Joint Civil Judge, Senior Division, Nashik.

4. On the other hand, Mr. Thengal, learned Counsel submitted that the said application has been filed under Section 152 of the CPC *inter alia* seeking correction in the Judgment and therefore, it has to be filed in the Court, which has passed the order. He therefore, submits that as the earlier order is passed by the learned Civil Judge, Senior Division, Nashik, the same Court has jurisdiction to pass the impugned order. He further submits that in fact, an application was earlier filed in the Family Court, however, the Family Court has directed the Respondent to file application before the learned Civil Judge, Senior Division, Nashik. He

therefore, submits that no interference in the impugned order is warranted.

5. Perusal of the record shows that the marriage between the Petitioner and the Respondent was solemnized on 1st June 1983 as per the Hindu rites and rituals. In the year 1998, the Respondent-Wife filed Hindu Marriage Petition No.18 of 1998 before the Court of learned Joint Civil Judge, Senior Division, Nashik and the learned Trial Court has directed the Petitioner-Husband to pay the maintenance of Rs.4,000/- per month to the Respondent-Wife. The Operative Part of the said order dated 14th November 2008 passed by the learned Joint Civil Judge, Senior Division, Nashik in Hindu Marriage Petition No.18 of 1998 reads as under:

“ORDER

- 1. Petition is allowed with cost.*
 - 2. Petitioner/wife is entitled for judicial separation with respondent/husband.*
 - 3. Respondent/husband do pay an amount of Rs.4000/- p.m. to the petitioner/wife as a permanent alimony.*
 - 4. Decree shall be drawn up accordingly.*
- Judgment is dictated and pronounced in an open Court.”*

6. In the execution proceedings filed to execute the above order in Petition bearing R.D. No.40 of 2011, the learned Judge has observed that the decree holder is entitled to claim the amount of permanent alimony from the date of the judgment i.e. 14th November 2008. The said order is challenged by the Respondent by filing Writ Petition No.2760 of 2016. A learned Single Judge by order dated 21st June 2018, allowed the withdrawal of the said Writ Petition with liberty to the Respondent-Wife to approach the learned Trial Court for clarification of clause No.3 of the Operative Part of the order dated 14th November 2008. Accordingly, the Respondent-Wife filed the application bearing Exhibit-X4 in R.D. No.40 of 2011 before the learned Family Court, Nashik and by the order dated 19th September 2018, learned Family Court, Nashik passed order clarifying that being Executing Court, the Family Court has no *locus standi* and jurisdiction to give clarification of clause 3 of the order dated 14th November 2008. In view of the same the Respondent-Wife filed application bearing Civil Miscellaneous Application No.6 of 2018 in the Court of learned Civil Judge, Senior Division, Nashik filed under Section 152 of the CPC for correction of the order and accordingly, the learned Joint Civil Judge, Senior Division, Nashik passed the order dated 9th

March 2021 by directing that the maintenance of Rs.4,000/- per month be granted to the Respondent-Wife from the date of application till its recovery.

7. To appreciate the contention raised by Mr. Deshpande, learned Counsel, it is necessary to set out Section 152 of the CPC., which reads as under:

***“152. Amendment of judgments, decrees or orders.
— Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”***

Thus, Section 152 of the CPC clearly provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Thus, it is very clear that the errors or omissions can be corrected only by the Court which has passed the order. The Court contemplated under Section 152 of the CPC is the Court which has passed the earlier order. Admittedly, the order dated 14th November 2008 was passed by the learned

Joint Civil Judge, Senior Division, Nashik and therefore, rightly the application under Section 152 of the CPC being Civil Miscellaneous Application No.6 of 2018 has been filed before the same Court.

8. In fact, it is required to be noted that this Court by order dated 21st June 2018 granted liberty to approach the Court for clarification regarding clause No.3 and the Respondent-Wife has approached the Family Court and the Family Court has held that the Family Court has no jurisdiction and the same will have to be filed before the Court which has passed the order. Accordingly, the application under Section 152 of the CPC is filed in the Court of Civil Judge, Senior Division, Nashik.

9. It is the submission of Mr. Deshpande, learned Counsel that the Respondent has approached before the Family Court in execution proceedings and not by way of filing application under Section 152 of the CPC before the Family Court. However, it is very clear that the Court which has passed the order has to pass the order under Section 152 of the CPC., and therefore, the Court of learned Civil Judge, Senior Division has the jurisdiction. Accordingly, there is no merit in the contention raised by Mr.

Deshpande, learned Counsel of the Petitioner that the order passed by the learned Civil Judge, Senior Division is passed without jurisdiction.

10. As far as merits of the impugned order are concerned, the Supreme Court in the decision in case of *Rajnish vs. Neha & Anr.*¹, clearly held that permanent alimony be granted only from the date of filing of the application and not from the date of the order. The relevant observation is in paragraph No.96, which reads as under:

“96. The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years.”

11. Therefore, the impugned order cannot be interfered even on the merits of the case.

12. The Writ Petition is dismissed, however, with no order as to costs.

1 (2021) 2 SCC 324

13. The relief sought in the Interim Application is to allow the Applicant i.e. Respondent-Wife to withdraw the maintenance amount with accrued interest, which has been deposited by the Petitioner in this Court. Accordingly, the Respondent-Wife is permitted to withdraw the maintenance amount with accrued interest. The registry to take necessary steps within a period of three weeks from today. Accordingly, the Interim Application is disposed of in these terms, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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