

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

WRIT PETITION NO.2640 OF 2025

Rohan Manohar Jamdar

.... Petitioner

Versus

Minal Rohan Jamdar

.... Respondent

.....

Mr.Aditya Parmar and Aisha Shaikh i/b. M/s.Hulyalkar and Associates, Advocate for the Petitioner.

Mr.Ajinkya Udane, Advocate for the Respondent.

Mr.S.S. Ghag, APP for Respondent-State.

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CORAM : MANJUSHA DESHPANDE, J.

DATED : 13.06.2025

P.C. :

1 The Petitioner-husband, in this Writ Petition is invoking Article 227 of the Constitution of India alongwith Section 482 of the Code of Criminal Procedure and now Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, for seeking directions to quash and set aside the order dated 27.02.2025, passed by the Family Court No.2, Pune below Exhibit-40 in Petition No.E 79 of 2020.

2 The case of the Petitioner-husband is that, the Petitioner and Respondent were married on 16.12.2012 at Belgaon, Karnataka.

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According to the Petitioner, the Respondent-wife has abruptly left his company without informing him. The Respondent-wife failed to perform basic duties; disrespected family customs and rituals; and behaved like an outsider in her own matrimonial home. Though efforts were made by the family members to resolve their differences, the discord could not be resolved. Since 13.11.2013, the Respondent has been residing with her parents. The divorce proceedings were filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955, before the Family Court No.4, Pune, which came to be decided alongwith counter claim filed by wife on 26.02.2020. Thereafter the Petitioner-husband preferred Appeal in this Court against the order passed by Family Court, Pune.

3 In the meanwhile, the Respondent-wife has filed proceedings for maintenance under Section 125 of Cr.P.C. In the pending proceedings, the application came to be moved by the Respondent-wife claiming that although she has filed affidavit of examination-in-chief but the husband has not conducted the cross-examination.

4 In the *Roznama* of 04.05.2024, it is recorded that the Applicant-wife was present on the said date, however, Respondent-husband was absent. Therefore, considering the consistent absence of the Respondent-husband, an order below Exhibit-1 came to be passed recording that the Petition may be proceeded without

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evidence of the Respondent-husband. The said order passed below Exhibit-1 is not placed on record, however, reliance is placed on the *Roznama* dated 04.05.2024.

5 In view of such order, the Petitioner/Applicant moved an application for setting aside the said order. The Application was moved on 07.01.2025 to set aside the order, which is passed below Exhibit-1, contending that the Petitioner needs to be given fair opportunity to cross-examine. If such opportunity is denied, irreparable loss will be caused to him. In order to afford fair opportunity, the order passed below Exhibit-1 is required to be quashed and set aside.

6 The Respondent-wife herein therein has filed 'say' in the said application contending that the Petitioner-husband is intentionally prolonging the matter thereby depriving the Respondent-wife from her legitimate maintenance. Though various chances are granted to him, he has shown a lethargic approach. Therefore, the Application does not deserve consideration.

7 After hearing the respective parties, the Judge, Family Court No. 2, Pune, dismissed the application filed by the present Petitioner *vide* order dated 27.02.2025, with costs (below Exhibit-40). The learned counsel for the Petitioner submits that the Petitioner is working in Australia hence he is represented through his Power of *Rajeshri Aher*

Attorney (POA). As such, he could not keep himself present on the given date fixed in the matter, and he could not diligently pursue the matter before the Family Court, Pune. Therefore, considering the same, in order to grant him fair opportunity in the proceeding, the impugned order deserves to be quashed and set aside. He further undertakes to conclude the cross-examination, if this Court grants a fixed date for conducting the cross-examination, and would cooperate in the proceedings.

8 The learned advocate for the Respondent has opposed the prayer made by the Petitioner, citing consistent adjournments taken in the Family Court, Pune. Irrespective of the adjournment, the Petitioner is also absent, on the fixed dates of hearing, he is neither present personally nor through his Power of Attorney, thereby prolonging the decision on her application for maintenance pending since 2020. The Respondent has not received a single penny for her sustenance so far. Hence, in view of the long standing pendency of application of the Respondent, the Writ Petition deserves to be dismissed.

9 After hearing the respective parties, and after going through the orders passed by the Family Court, Pune, it appears that even on previous occasion, 'no evidence' order came to be passed by the Family Court, Pune, on which an application below Exhibit-37 came to be filed. The order of no evidence is set aside subject to payment of

cost of Rs.10,000/- *vide* order dated 16.10.2024. Though, after perusing *Roznama*, it is evident that the Petitioner is not diligently pursuing the matter, and in fact he is delaying the matter. It needs to be appreciated that he is residing in Australia, it is difficult for him to keep track of the dates, his Power of Attorney holder is also not keeping the track of dates and causing his appearance on given dates. If the order impugned is not set aside, it would be denying an opportunity to defend his case permanently which would cause great prejudice to his right to defend himself. In order to grant him one more opportunity, the order passed by the Family Court, Pune, deserves to be set aside. The inconvenience to the Respondent can be to some extent compensated by imposing cost on the Petitioner. Accordingly, the order passed below Exhibit-40 dated 27.02.2025, is quashed and set aside subject to condition that the Petitioner herein shall deposit an amount of Rs.50,000/- in the account of the Respondent within 10 days from today and produce the receipt of the cost which is deposited in the account of the Respondent before the Family Court, Pune, and the Petitioner shall conduct the cross-examination on 24.06.2025 and 25.06.2025.

10 With the above directions, the Writ Petition stands disposed of.

11 It is further directed that the Petitioner shall co-operate in disposing the pending proceedings in the Family Court, Pune, and the Family Court, Pune, is requested to decide the proceedings as early as

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possible, preferably within a period of six months from the date of passing of this order.

12 Writ Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)