



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 258 OF 2025

PETITIONER : Dinesh Vasantao Deshmukh
(Ori. Non-Applicant) Aged about 55 years,. Occ.
Advocate, R/o. In front of Old
Tahsil Office, Daryapur, Tah.
Daryapur, District Amravati.

VERSUS

RESPONDENT : Sou. Archana Dinesh Deshmukh
(Ori. applicant) aged about 52 years, Occ. Service,
R/o. 50, Krushak Colony,
Ramnagar, Amravati, Tal. & Distt.
Amravati.

Mr. Vikky Suresh Gokhale, counsel for petitioner.
None for the respondent.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **23/07/2025**

JUDGMENT :

1. Despite the service and sufficient opportunity, the respondent fails to appear, therefore writ petition is taken up for the final disposal.

2. Heard.

3. **Rule.** Rule made returnable forthwith. With consent of learned counsel appearing for the petitioner, the matter is taken up for disposal.

4. The petitioner has challenged the order passed by the Family Court below Exhibit-19, rejecting the application to set aside the No Written Statement Order.

5. The brief facts which are necessary for the disposal of the writ petition are as under:

The petitioner got married with the respondent on 21/12/2000 as per Hindu rites and customs. They are legally wedded husband and wife. After marriage, the respondent came to reside along with the petitioner in the matrimonial home. From the said wedlock, they have begotten one daughter, who is aged about 22 years. Thereafter, there was discord between the husband and wife, and the respondent started residing separately. She also filed the petition bearing No. 15/2021 before the learned Judge of Family Court, Nagpur, for grant of maintenance. She also filed a complaint under Sections 498A and 323 of the Indian Penal Code, 1860. The families of the petitioner and respondent tried to resolve the dispute, but the talks of the compromise were not

successful. The maintenance was granted in favour of the present respondent. Thereafter, she filed an application for recovery of the amount.

6. The petitioner has also filed the same. Thereafter, the respondent/wife filed the petition before the Family Court. The petitioner was served with notice. He has engaged the counsel. However, his counsel was not well, and due to his ill-health, he could not file the written statement before the Family Court, and therefore, a No Written Statement Order was passed against him. Thereafter, vide Exhibit 19, he filed an application for setting aside the No Written Statement Order, but the same was rejected, and hence, this writ petition.

7. It is submitted by the learned counsel for the petitioner that due to the ill-health of his counsel, he could not file the reply, but this aspect was not considered by the Family Court, and they rejected his application. The application filed by the present petitioner before the Family Court was supported by the affidavit as well as by the medical certificate, and despite the document being referred, the opportunity was not granted for the present petitioner to contest the petition. In view of that, he be

permitted to file a written statement before the Family Court by giving a fair opportunity to contest the petition.

8. On perusal of the record and the order, it reveals that the respondent/husband in the Family Court collected the copy of Exhibit No.13 on 29/02/2024. He wants to file a reply on application Exhibit No. 13, but due to ill-health of his counsel, he could not file the reply on Exhibit No. 13, and the order came to be passed below Exhibit No. 13. Immediately on 26/07/2024, without the reply of the petitioner, the application was disposed of. In view of the decision in Criminal Revision Application No. 90/2014, it is contended by learned counsel for the petitioner that the order below Exhibit No. 13 is required to be set aside and he be permitted to file a reply on Exhibit 13.

9. The application filed by the present petition for setting aside the order of no-reply was contested by the respondent/wife. On the ground that after sufficient opportunity, the petitioner has not filed a reply and therefore prayed for rejection of the application. Learned Family Court observed that in Criminal Revision Application No. 90/2014, which was filed by the respondent/wife and daughter of the respondent.

10. By way of this revision, the petitioner seeks modification of the order dated 25/04/2014 passed by the Family Court of Amravati in Petition No. E-170/2012 by enhancing the maintenance amount from Rs. 3,000/- to 5,000/- to the petitioner's wife.

11. Moreover, in Criminal Revision Application No. 90/2014, it was explicitly stated that the learned counsel for the husband did not dispute the proposition that if the wife was granted Rs. 5,000/- per month as maintenance, the daughter would have the liberty to approach the Family Court for enhancement of maintenance under Section 127 of the CrPC. Thereafter, the Criminal Application No. 132/2020 was filed by the wife with a prayer to clarify clause-II in the operative order by prescribing the date from which the petitioner/wife shall be entitled to recover the amount of maintenance from the respondent/husband, that application was rejected, and therefore, the petitioner carried out the amendment and deleted the claim of Rs. 5,22,936/- and claimed only Rs. 60,000/-. It is further observed by the Family Court that, on carefully reading of the papers, it appears that the respondent himself is a practicing

advocate, he has collected copy of Exhibit No.13 on 29/02/2024. As per the Roznama, he was present on following dates i.e. 29/02/2024 to 15/04/2024, 15/06/2024, and 26/07/2024, but he has not filed a reply. Thus, after sufficient opportunity, he has not filed the reply.

12. Moreover, considering the order of the Family Court, it reveals that the present petitioner, an advocate by profession who was present before the Court, despite having knowledge of the legal provisions, failed to file a reply, and therefore, the Family Court rejected the application. Considering that the petitioner, a practicing advocate, had engaged counsel who unfortunately fell ill, and had submitted a medical certificate on record, the Family Court ought to have granted an opportunity to the petitioner. Considering the fact that a fair opportunity is to be granted to the present petitioner, the writ petition deserves to be allowed by passing the following order.

ORDER

- a] The writ petition is **allowed**
- b] The order passed by the Family Court dated 27/02/2025 is hereby quashed and set aside.

- c] The petitioner is permitted to file his reply before the Family Court, Amravati.
- d] The petitioner shall file his reply within two weeks from today, and the Family Court shall take it on record.
- e] The petitioner and respondent both shall cooperate with the Family Court to dispose of the petition pending before the Family Court expeditiously.
- f] Rule is absolute in the above terms.

[URMILA JOSHI-PHALKE, J.]