

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

WRIT PETITION NO. 2481 OF 2024

Jyoti W/o Ravi Joshi @ Jyoti Rabendra Mishra
Vs.
Ravi S/o Kaushal Joshi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Y.D. Shukla, Advocate for petitioners
Shri P.S. Chawhan, Advocate for respondent

CORAM : SMT M.S. JAWALKAR, J.

DATE : 06/01/2025

Heard learned Counsel for the petitioners and
learned Counsel for the respondents.

2. Present petition is filed challenging the order passed below Exh. 17, rejecting the application under Section 24 of the Hindu Marriage Act, for maintenance *pendente lite* and litigation charges.

3. It is contended by the petitioner before the learned Family Court that she is wife of petitioner. Petitioner filed petition for nullity of marriage. He admitted that respondent is his wife. It is the contention of the petitioner that respondent performed marriage with one Ramshankar Bakelal Tiwari and also performed marriage with Manoj Gulabrao Bhongade then with Farukh Sheikh. The petitioner

filed all documents along with petition. The Family Court observed in paragraph No. 9 that respondent appeared on 03/03/2022, matter was sent to Counselor. Report of Counselor is filed on 27/06/2022. On 16/08/2022, the matter was adjourned for filing of written statement. On 14/10/2022, last chance was granted for filing written statement. On 23/11/2022, no written statement order came to be passed against respondent. Thereafter, on 18/01/2023, petitioner filed his evidence on affidavit and respondent filed application under Section 24 of the Hindu Marriage Act. The learned Family Court observed that as matter proceeded without written statement of respondent, therefore, *prima facie* it appears that, there is no challenge to the contention of the petitioner. Respondent has not taken any steps for setting it aside. It is further observed by the learned Family Court that the legality of marriage between respondent and petitioner becomes doubtful. It is the contention of the present respondent that petitioner herein is in habit of marrying with many persons.

4. I have gone through the contentions of the parties, citation relied on by the petitioner and impugned order. In the whole order there is no discussion whether the respondent/petitioner herein is having sufficient means to maintain herself. Learned Counsel for the petitioner relied on ***Vanita Pravin Gaikwad Vs. Pravind Pundlik Gaikwad, 2010 (1) Mh.L.J. 897***, wherein, it is held as under :

"10. The said Section confers a power on the Court in a given case to direct the Petitioner to pay necessary expenses of the proceedings to the respondent on an application being made by the respondent. Such an order can be passed when the Court is satisfied that the respondent does not have independent income.

.....Thus, in a given case where a Petition is filed for divorce or other relief by the husband, if wife does not have income to bear the expenses of the proceedings, she can apply to the trial court for grant of a reasonable amount for meeting the expenses of the proceedings initiated by the husband. The law mandates that such application shall be decided within a period of 60 days.

11. that in a given case without making provision for necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file a written statement. Therefore, this Court came to the conclusion that unless application made under Section 24 of the said Act was decided, the Court could not have proceeded to pass an ex-parte decree."

5. He also relied on judgment in ***Sushila Viresh Chhadva, 1996(1) Mh.L.J. 288***, wherein, it is held in paragraph No. 6 as under :

"6. When a fact of marriage is acknowledge or proved alimony follows subject of course to the discretion of the court in the matter having regard to the means of the parties and it would be no answer to the claim for maintenance pendente lite that the marriage was void ipso jure or was voidable. The Family Court was not right in taking into consideration the allegation of fraud and desception made in the petition of the purpose of deciding the prayer of interim alimony. The fact that there is a strong possibility of the marriage being declared as a nullity is no ground for declining even the basic right to claim interim alimony and expenses of the litigation."

6. It is settled position of law that even to defend, she

needs expenses and denial of such expenses she would be deprived to defend herself. The learned Family Court totally erred in passing the impugned order on the basis of suspicion that marriage is doubtful. While deciding such application, only aspect needs to be considered is whether the wife is having sufficient means of maintenance and whether the petitioner/husband is having sufficient means to provide maintenance. Accordingly, I proceed to pass the following order :

ORDER

- 1) Writ Petition is allowed.
- 2) The impugned order dated 20/12/2023, passed by Judge, Family Court No.3, Nagpur, is set aside.
- 3) Learned Family Court No. 3, is hereby directed to decide afresh application under Section 24 of the Hindu Marriage Act, of the respondent, in the light of judgments passed by this Court.
- 4) Learned Family Court shall not proceed further unless the application under Section 24 of the Hindu Marriage Act is decided on its own merits.

Petition stands disposed of.

(SMT M.S. JAWALKAR, J.)