

(2017) 09 BOM CK 0103
In the Bombay High Court
Case No : 191 of 2016

Jayant s/o Bhaduji Wasnik

APPELLANT

Vs

Smt. Swarnalata w/o Jayant Wasnik

RESPONDENT

Date of Decision : 28-09-2017

Acts Referred:

Citation : (2017) 09 BOM CK 0103

Hon'ble Judges : V. M. Deshpande

Bench : SINGLE BENCH

Advocate : S. G. Karmarkar, S. T. Dhurvey

Final Decision : Dismissed

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
2. The applicant is original non applicant in the proceeding bearing Petition No.E-296/ 2014, which is decided by the learned Judge, Family Court No.3, Nagpur dated 22.08.2016. As per the impugned order, the present applicant was directed to pay an amount of Rs.4,000/per month to the present non applicant towards maintenance from the date of order i.e. from 22.08.2016.
3. Marriage between the applicant and non applicant was solemnized on 25.11.2012 at Gurunanak Bhavan, Nagpur. Relations between the parties are not disputed. It is also not in dispute that the present non applicant is only a housewife. The submission on the part of the learned counsel for the applicant is that proper opportunity was not granted to the present applicant. Therefore, the applicant was unable to present his case properly before the learned Judge, Family Court. Therefore, the present revision is required to be allowed and the matter is required to be remanded back for giving an opportunity to the applicant.
4. Mr. Dhurve, learned counsel for the non applicant invited my attention to page no. 11 of the compilation which shows that on 02.12.2014, the present applicant

who was non applicant before the Family Court gave an undertaking before the learned Judge of the Family Court that he will clear off all interim maintenance amount before closing the evidence from the side of the present non applicant/ original petitioner. In spite of the said undertaking given by the present applicant, the amount of arrears were not cleared off by the non applicant is the statement of the learned counsel for the non applicant. Mr. Karmarkar, learned counsel for the applicant submitted that the applicant has given the said amount to his earlier Advocate. However his earlier Advocate has failed to deposit the said amount. But fact remains that as per the undertaking given by present applicant on 02.12.2014, he has failed to deposit and clear off all the arrears of maintenance amount. It is open for the present applicant to take appropriate steps against his earlier advocate if really he had handed over the amount of maintenance to him.

5. The order dated 02.05.2016 made by the learned Judge Family Court below Exh.1 shows that the applicant was absent and despite the sufficient opportunity, he failed to lead the evidence. The observation shows that in spite of sufficient opportunities granted to the applicant, it is the applicant who has failed to avail the opportunities given to him. The learned counsel for the applicant could not point out anything from the record to show that the applicant was present before the Family Court. After the applicant chose not to contest the matter voluntarily despite the chances given to him by the learned Judge of the Family Court, he should be thankful to himself. It is very easy before the higher courts to make allegations against the earlier Advocate without there being anything on record. This tendency of the litigants of making reckless allegations behind the back of an Advocate and then claiming relief from the Court, has to be curbed.

6. The learned Judge of the Family Court has rightly considered the available evidence on record and has rightly granted the maintenance of Rs.4,000/in favour of the present non applicant. No case is made out for interference by the applicant. In the backdrop of the above discussions, it is clear that the applicant himself was responsible for not participating in the proceeding. Not only that he has failed to abide by his own undertaking given before the learned Judge, Family Court. Hence the applicant is not entitled to any relief. The revision application is therefore dismissed with costs of Rs.25,000/.

Rule is discharged.