

Criminal Misc. Appl. No.88/2020
Sheetal Vs. Avinash**ORDER BELOW EXHIBIT - 37**

(Passed on this 16th day of February,2023)

1. Present application is filed by the non applicant for setting aside order dated 13/06/2022 passed below Exh.5. It is submitted that, the Court has directed to pay Rs.3,500/- per month maintenance to the applicant on interim basis. The said order was passed ex-parte against the present non applicant. Said order was came to be passed due to non filing of say on the application. Counsel of the non applicant did not give instruction to file say on the application. Therefore, say was not filed by the non applicant. They are the illiterate persons and do not know about the procedure of law. The previous counsel has not guided properly to the non applicant. Therefore, requested to quash and set aside the order passed by the Court.

2. Per contra, applicant has filed say at Exh.38 and strongly opposed the application. It is contended that, the non applicant has appeared on 27/01/2021 and was also engaged counsel. The ex-parte order was came to be passed for non filing of reply. On 30/10/2021 no say order was came to be passed but the said order was not challenged for set aside. Therefore, requested to reject the application.

3. I heard learned advocate Mrs. Vidya Choube and she has filed written notes of argument at Exh.40. I also heard learned advocate Shri. S. S. Kushwah for the applicant.

4. Considering the submissions following points arose for my determination and I record my findings against each of them for reasons to follow:

Sr. No.	Points	Findings
1.	Whether this court has jurisdiction to set aside own order passed as ex-parte?	...In negative.
2.	Whether non applicants are entitle for alternate remedy?	...In negative.
3.	What order?	...As per final order.

REASONS

As to point no.1 and 2:

5. Considered submissions and gone through the record. On perusal of record, it would show that the main application was filed on 10/12/2020. Thereafter, notice was issued to the non applicants. Accordingly, on 27/01/2021 non applicants appeared through advocate Shri. Chikhale and sought adjournment vide Exh.7. Thereafter, matter was posted for reply of the non applicants. On 16/09/2021 non applicants sought permission to file reply vide Exh.19. Accordingly, permission was granted to file reply. On 09/12/2021 non applicants engaged another lawyer vide Exh.21. Thereafter, on 16/02/2022 non applicant no.1 engaged another lawyer vide Exh.22. On 03/03/2022 non applicants engaged another lawyer vide Exh.25. On 12/08/2022 non-applicants engaged advocate Shri. S.S. Pardeshi vide Exh.30. On 12/11/2022 non applicants engaged advocate Shri. Kawale and Mrs. Vidya Choube vide Exh.36.

6. Mean time on 30/10/2021 the application was proceeded ex-parte without say of non applicants. Hearing on Exh.5 was concluded on 13/07/2022 by passing order and it was pleased to be pay maintenance of Rs.3500/- by non applicants to applicant till decision of the application.

7. Considering the conduct of the non applicant, it would show that, he was consistently engaged several lawyers in the present application, but did not take efforts to file reply within stipulated time. It is not acceptable that the party who had engaged many lawyers and did not get proper guidance to file reply. Such submission appears to be mockery on judicial process. Even conduct of the non applicants is also not appears clean hands. Now, I am of the view that the order passed below Exh.5 cannot be set aside by this Court. There is no alternative remedy available to file revision or appeal before the proper forum. This Court cannot set aside own order at this juncture. Hence, I am of the view that, this Court court has no jurisdiction to grant relief sought by the non applicants. Therefore, this application is devoid of merit and hence findings of point no.1 and 2 are given in negative.

As to Point No.3:-

8. In view of finding of Point No.1 and 2, I proceed to pass following order as under:-

ORDER

1. Application is rejected.

Parseoni
Date:-16/02/2023

(O.J. Kulkarni)
J.M.F.C.Parseoni

Argument heard on	02/02/2023
Order passed on	16/02/2023
Transcription ready on	16/02/2023
Order checked and signed on	16/02/2023

CERTIFICATE

I affirm that the contents of this P.D.F. file of order are word to word, as per original order.

Name of Stenographer- M.Y. Mushtaque.