

ORDER BELOW EXH.59 IN R.D. NO.104/2018

(Smt. Trupti Vidhate Vs. Mahesh Navale)

The judgment debtor has filed this application to dispose of this matter. He has submitted that he has paid entire amount mentioned in Exh.1 to the decree holder. With such submission he has prayed to allow his application.

2) The decree holder has objected the application by filing her reply vide Exh.63. In sum & substance, she has submitted that the application is not tenable. As per judgment & decree dated 27/06/2018 in H.M.P. No. 251/2016 the Court directed the judgment debtor to pay her maintenance @ Rs. 6,000/- per month and also to pay maintenance @ Rs. 3,000/- per month to her minor son Prasad. However, he was irregular in payment of maintenance. In spite of the fact that he is a capable person, he was not paying her maintenance. Therefore, she was required to take various steps. She was also required to take steps as per Order XXI Rule 46 of CPC against compensation amount of Rs. 47,02,404/- received by the respondent towards acquisition of agricultural land bearing Gat no. 451/2/E. For that purpose she was required to go upto the Hon'ble High Court. Before the Hon'ble High Court the judgment debtor agreed to pay the maintenance amount regularly. In spite of this, he was not paying the maintenance amount regularly. Therefore, he has been in arrears of maintenance. Due to which her minor son Prasad and she are facing difficulties for their survival. More so, during the pendency of this proceeding the amount of maintenance post the amount mentioned in Exh.1 became due. Therefore, she filed applications at Exh.48 & 51. He has not also paid

the maintenance amount for the period mentioned in the said applications. It is not necessary for her to file fresh application for recovery of maintenance every time. This will lead to multiplicity of litigations. In support of her said submission she has also relied on the judgment of the Hon'ble Bombay High Court in the case of **Swati Suresh Ubale Vs. Suresh Laxman Ubale [(1996)1 Mah.L.J. 133]**. She has further submitted that the applications filed by her vide Exh.48 & 51 for recovery of arrears of maintenance amount are legal and proper. With such submissions, she has prayed to reject the application.

3) I have heard arguments of learned Counsels for both the parties. Learned Counsel for the judgment debtor has vehemently argued that the Darkhast originally filed by the decree holder has been already satisfied. The applications filed by her vide Exh.48 & 51 for recovery of arrears of maintenance amount post this Darkhast are not maintainable. She is required to file fresh application for the same. The judgment of the Hon'ble Bombay Court in the case of **Swati Suresh Ubale Vs. Suresh Laxman Ubale** (*supra*) is pertaining to recovery of arrears of maintenance amount under Sec. 125(3) of the Code of Criminal Procedure. The said judgment is not applicable to the case in hand. With such submissions he has prayed to close the proceeding of this matter.

4) As against this, learned Counsel for the decree holder has vehemently argued that immediately after the filing of this Darkhast, the judgment debtor did not pay arrears of maintenance amount to his client He was avoiding to pay her maintenance. Therefore, his client was required to take various steps to recover arrears of maintenance

amount. While this matter was pending for recovery of arrears of maintenance amount as stated in Exh.1, the further maintenance amount was also due on the judgment debtor. Therefore, his client was required to file applications at Exh.48 & 51 for recovery of the same. Every time his client is not required to file fresh applications for the recovery of maintenance which had fallen due during the pendency of earlier application. She may file application in the Darkhast which is already pending for recovery of arrears of maintenance amount. Further, if every time his client files fresh applications, unnecessarily there will be multiplicity of litigation. The same principle of law has been explained in the case of **Swati Suresh Ubale Vs. Suresh Laxman Ubale** (*supra*). With such submissions, he has prayed to reject this application.

5) I have carefully perused the record of the case. It appears that in Exh.1 the decree holder has claimed arrears of maintenance for the period from 28/11/2016 to 27/07/2018 which is amounting to Rs. 1,80,000/- & other expenses. It also appears that though the amount stated in the Exh.1 has been satisfied, as per application at Exh. 58 the judgment debtor made last payment of Rs. 1,040/- on 23/10/2021. In the meanwhile, during the pendency of this proceeding, the decree holder filed application at Exh.48 for recovery of arrears of maintenance amount for the period from 28/07/2018 to 27/02/2020 which is amounting to Rs. 1,80,000/- & for other expenses on 11/02/2020. Admittedly, the amount stated in the application at Exh.48 is not satisfied till today. Further, the application at Exh.48 is also well within limitation.

6) Now, only question remains whether the decree holder is required to file fresh application for future maintenance which had fallen due during pendency of earlier application. In my considered opinion, in such case she is not required to file fresh application. If in such case every time the decree holder is directed to file fresh application, unnecessarily there will be multiplicity of litigation. It is settled principle of law that multiplicity of litigation should be avoided. It appears that in the case of **Swati Suresh Ubale Vs. Suresh Laxman Ubale** (*supra*) the Hon'ble Bombay High Court was dealing with the question whether the wife was required under law to make fresh application for recovery of maintenance which had fallen in arrears during the pendency of the two applications filed by her, and whether in the absence of any further application by the wife, seeking recovery of maintenance from January 1993 till passing of the order dated 22/09/1994, the Court could have passed appropriate orders for recovery of the said amount. In the said judgment the Hon'ble Bombay High Court in para 19 has observed as follows :

“.....It is the fundamental principle of law that multiplicity of proceedings should be avoided as far as possible and practicable, and if the aggrieved wife, children or parents, as the case may be, has made an application for recovery of arrears of maintenance and during the pendency of such application, the maintenance has fallen due for the period post application, pending adjudication before the Court, there cannot be and should not be any need for filing fresh application for recovery of

maintenance which had become due during the pendency of the application.”

In this view of the matter, in my considered opinion it is not just and proper to direct the decree holder to file fresh application for recovery of maintenance amount stated in Exh.48 which had fallen due during the pendency of this Darkhast. In the result, I pass following order.

: ORDER :

The application at Exh.59 is rejected.

Date : 15/02/2023

(A. P. Khanorkar)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

- a) Name of the Stenographer : R.P. Sakinal, Steno. Grade-2
- b) Court : Jt. CJSD and ACJM Court,
Barshi.
- c) Date of Judgment/Order : 15.02.2023
- d) Judgment/Order signed by
the Presiding Officer on : 15.02.2023
- e) Judgment/Order uploaded on : 15.02.2023