



ORDER BELOW EXH-38
(Passed on 03-10-2025)

The plaintiff filed the application under Order 47 Rule 1 read with 114 of the Code of the Civil Procedure for review of order passed below Exh.24.

2. It is the contention of plaintiff that court has passed the order below Exh.24 by considering the provisions of Article 281 of Mulla's Commentary on Mohammedan Law. The Hon'ble High Court had differentiated the provision of Article 278 and 281 in the light of section 151 of CPC. The counsels for both parties was unable to bring the position as discussed in para 7 and 8 of the cited authority in the said order which differentiate the position when the husband filed a suit for restitution. Thus, it seems that it is the mistake on record which can be corrected by reviewing the said order. The said application was filed by the plaintiff within the period of limitation. Hence, the order below Exh.24 be reviewed in the interest of justice.

3. Per contra, the defendant filed her say below Exh.40 and strongly resist the application on the ground that it is false, illegal and against the provisions of law. She further submits that no new facts were brought on record and there is no any such fact in the instant application which could show there was mistake on record at the time of passing the order below Exh.24.

Hence, the said application be rejected.

4. Heard both the learned advocates at considerable length. The Ld. Advocate for plaintiff relied upon the judgment of **Shabbir Ahemad Sheikh Vs. Shakilabano w/o Shabbir 1984 CJ (Bom) 467**, in which the Hon'ble High Court in para No.8 held that, *"However, the claim in the instant case is different. The plaintiff/husband sues the wife for restitution of conjugal rights on the ground that she has deprived him of cohabitation without any reasonable or probable cause. The defence raised by the wife is that she was driven out by the husband and that she was ill-treated by him. As I have already as I had pointed out under the Mahomedan Law the right conferred upon the wife is to sue for maintenance and unless she establishes that her husband has neglected her or refused to maintain her without any reasonable cause she is not entitled to a decree for maintenance. Further, it has to be seen that she is not entitled at all to a decree for past maintenance, unless the claim is based, on a specific agreement. All these things have to be proved in a suit properly filed for maintenance by the wife. Unless these are proved under the Mahomedan Law a wife is not entered to maintenance. It is open to doubt whether the wife governed by Mahomedan Law would be entitled to interim maintenance unlike under the Hindu Law even in a suit for maintenance itself. Here in the instant case she is a respondent in a suit for restitution of conjugal right. Section 24 of the Hindu Marriage Act is a special provision made in the said Act wherein any proceeding under the said Act the petitioner is entitled to claim*

interim maintenance from the respondent. In my view the same right cannot be carved out by reference to section 151 of the Civil Procedure Code in regard to the matrimonial cases which are not covered by Section 24 of the Hindu Marriage Act.”

5. In the case in hand, the husband i.e. plaintiff filed the suit for restitution of conjugal right in which wife i.e. defendant filed application seeking interim maintenance under section 151 of CPC and the said application was partly allowed by this court. In the above cited supra the Hon’ble High Court allowed the revision application of husband by setting aside the order of interim relief which is in favour of wife. The same view was taken by Hon’ble High Court in **Aseem Rafiyoddin Sayyad Vs. Dr. Saniya 2024 SCC Online Bom 1746**, and in para No.8 held that, *“the civil court had no jurisdiction to grant any interim relief by way of interim maintenance pending decision of the case of restitution of conjugal rights filed by the husband, where parties are muslim.”*

6. In the case in hand, both parties are muslim and the above issue is squarely covered under the above cited supra. Hence, in view of above cited judgment of Hon’ble High Court I am of considered view that the order passed below Exh.24 needs to be set aside as the court had no jurisdiction to grant interim maintenance. Therefore, I proceed to pass following order.

ORDER

1. Application below Exh.38 is allowed.
2. The order below Exh.24 is set aside in view of order under

..4..

47 Rule 1 read with section 114 of Code of Civil Procedure.

Date:- 03-10-2025

Place:- Karanja (Lad).

(B. A. Nerlikar)

2nd Jt. Civil Judge (Jr.Dn.),
Karanja (Lad).

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.

Name of Steno. :- D. V. Daware (Stenographer Grade-III)
Court Name :- 2nd Jt. Civil Judge (Jr.Dn.) and J.M.F.C.,
Karanja. Dist. Washim.
Date :- 03/10/2025
Order signed by the :- 03/10/2025
presiding officer on
Order uploaded on :- 03/10/2025

