

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 302 OF 2002

Shivaji S/o Sayaji Hivale

Age : 38 Yrs., Occ. : Labour,

R/o : Mandna, Tq. Sillod,

Dist. : Aurangabad.

..... APPLICANT

V E R S U S

1. Sakhubai W/o Shivaji Hiwale

Age : 33 Yrs., Occ. Household,

R/o : Mandna, at present

Lihakhedi, Tq. Sillod,

Dist. : Aurangabad.

C/o Shankar Maruti Dapke

R/o Lihakhedi.

2. Devidas S/o Shivaji Hiwale

Age : 11 Yrs., Occ. Nil,

u/g of R – 1 – the real mother.

..... RESPONDENTS

.....

Mr. K.P.Phatake h/f Mr. D.P.Palodkar,

Advocate for Applicant.

Mr. M.M.Joshi, Advocate for R – 1 & 2.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 12th FEBRUARY, 2015

.....

ORAL JUDGMENT :

1. The present Revision Application is directed against the Judgment and Order dated 11/08/2002 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No. E-454/2001, whereby the learned Principal Judge of the Family Court allowed the Petition filed by present non applicant Nos. 1 and 2 partly and directed that the applicant shall pay the maintenance @ ₹ 700/- [Rupees Seven Hundred only] per month from the date of the application to the non applicant No. 1 and ₹ 500/- [Rupees Five Hundred only] per month to the non applicant No. 2 from the date of the application together with the payment of costs of ₹ 500/- [Rupees Five Hundred only].

2. Heard Mr. K.P.Phatake holding for Mr. D.P.Palodkar, the learned counsel for the applicant and Mr. M.M.Joshi, the learned counsel for non applicant Nos. 1 and 2/wife and son.

The parties will be referred hereinafter as

husband, wife and son for the sake of convenience.

3. The relation between the parties as husband, wife and son is not in dispute. On 30/06/2001, wife and minor son was required to approach to the Family Court for their due right of maintenance from husband.

The marriage took place prior to 13 years at village Lihakheti. The petition for maintenance states that for a period of one year, wife was treated with due respect, however, subsequently, she was subjected to all sorts of abuses at the hands of husband and her in-laws. The said atrocities were disclosed by wife to her father, however, she was given understanding to her that in the matrimonial life, such thing do take place.

Even at the time of pregnancy, the illtreatment continued and she was sent to her parental house. That time also, her parents prevailed upon wife and she returned to her matrimonial house.

4. On 10/07/1998, the wife along with son was driven out of the matrimonial house and since then they are residing in the parental house of wife.

5. It was stated that the petition for maintenance was filed on 20/09/1998 by them vide Petition No. 614/1998. The said petition was compromised and in pursuance to the said compromise, from 12/11/1999 wife and son started residing with the husband.

The husband, however, after the lapse of one month, again continued his old habit of illtreatment. It was pointed out that husband has established illicit relations with one Kantabai Shirsath and on her instigation, the wife was subjected to all sorts of atrocities. On 21/05/2000, she was again driven out.

6. On hearing and from perusal, it is clear that prior to filing of the present petition for maintenance, on 2 occasions, she was required to file petition for maintenance. Out of that, one was compromised and one was dismissed for want of prosecution as she was absent.

7. The learned Principal Judge of the Family Court has considered the history of the previous filing of maintenance cases. The learned court also considered the contention on behalf of the husband that in lieu of the

compromise, sale deed was executed in her favour in respect of 0.40 R.

The learned counsel for the applicant before this Court also reiterated that since the sale deed was executed, the wife is having sufficient means for her maintenance.

8. It is to be noted that the xerox copy of the sale deed is placed on record along with list of documents [Exh. 7]. The said sale deed is not executed by husband Shivaji, however, it was executed by one Tukaram Sakharam Hiwale. Further, there is nothing available on record to show that the wife is in actual physical possession of the said land and she is cultivating the same. The husband was under boundand duty to prove the said fact. In absence of any positive evidence in that behalf, the just right of the wife to claim maintenance can not be defeated on the basis of the sale deed which was not executed by husband. Further, the claim of maintenance of son can not be defeated by entering into compromise with the wife.

9. The learned Principal Judge of the Family Court, on evaluation of the evidence, found that the husband was

responsible for the neglect of wife and son. Further, from the available evidence, according to the learned Principal Judge of the Family Court, husband is having sufficient means to provide maintenance. In my view, the learned Principal Judge of the Family Court has not committed any mistake in reaching to the quantum. The evaluation of the record shows that there is no perversity or any error in the impugned Judgment warranting interference by this Court.

10. Hence, the present Revision Application is dismissed.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 302.2002 - [J]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]
