

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 118 OF 2015
WITH CA/3652/2015 IN SA/118/2015

RAJAHANS VITHOBA DIGHE
VERSUS
ALKA RAJHANS DIGHE

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Advocate for Appellant : Shri Thorat Nanabhau R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 25, 2015

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PER COURT :-

1. The appellant submits that the substantial question of law is as to whether monthly maintenance by way of permanent alimony could have been granted without there being any prayer made by the wife.
2. The appellant / husband had filed HMP No.97 of 2007 seeking a decree of divorce under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 as against the respondent / wife.
3. The appellant has indicated through the cause tittle before the trial Court that the wife was residing at Shirdi and he was residing at Talegaon Dighe. In paragraph No.17 of the judgment of the trial Court, dated 5.2.2009, it was concluded that when a decree of divorce is being passed, the Court has to simultaneously pass an order of permanent alimony under Section 25 of the Hindu Marriage Act, 1955.
4. As such, while considering the quantum of permanent alimony to be

granted, the trial Court has considered the occupation of the appellant and his agricultural activities. Monthly maintenance of Rs.1700/- only had been granted by the trial Court to respondent No.1, while allowing the petition of the appellant and declaring that the marriage between the parties stands dissolved with immediate effect.

5. The appellant preferred RCA No.11 of 2009. In the appeal, the appellant has not taken a ground as is canvassed in this proceeding as a substantial question of law. The appellant had set out his appeal only to the extent of the quantum of permanent alimony granted and had not taken up a ground as to whether such a permanent alimony and maintenance could have been granted under Section 25 of the Hindu Marriage Act, 1955 without any prayer by the wife. It is for the first time that the said ground is sought to be taken in this proceeding.

6. Section 25 of the Hindu Marriage Act, 1955 reads as under :-

“Section 25 - Permanent alimony and maintenance.

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the

case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

7. Having considered the impugned judgments and the submissions of the learned Advocate for the appellant as well as the grounds raised, I do not find that any substantial question of law is involved in this matter. The Second Appeal is dismissed. Civil Application No. 2652 of 2005, therefore, does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)

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