

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.317 OF 2015
WITH
CIVIL APPLICATION NO.713 OF 2015

Prakash Haripant Awasekar ... Appellant
Vs.
Seema Prakash Awasekar ... Respondent

Mr. Ajay A. Joshi for Appellant.
Mr. Siddharth S. Deshpande for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 24TH APRIL, 2015

P.C. :

Heard Mr. Joshi, learned Counsel for appellant and Mr. Deshpande, learned Counsel for respondent at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original the original respondent has challenged the judgment and decreed dated 16.04.2012 passed by the learned Civil Judge, Senior Division, Pandharpur in Hindu Marriage Petition No.56 of 2004 as also the judgment and decree dated 01.12.2014 passed by the learned District Judge-1, Pandharpur in Regular Civil Appeal No.120 of 2012. By these orders, the Courts below partly allowed the application filed by the respondent and passed decree of judicial separation under Section 10 read with Section 13(1)(i-b) of the Hindu Marriage Act, 1955 (for short 'Act'). The Courts below directed the appellant herein to pay Rs.5,000/- with effect from 31.12.2008 and Rs.2,000/- with effect from 01.01.2009 as permanent alimony and subsistence allowance in addition to payment of Rs.6,000/- per annum maintenance as awarded in Special Civil Suit No.83 of 2009.

The Courts below also created charge on plot No.25, Gat No.40/2A/1/1 among other directions.

3. In support of this Appeal, the only contention advanced by Mr. Joshi is that the Courts below were not justified in passing the decree of permanent alimony. In support of this submission, he relied upon the decision of the Apex Court in the case of *Chand Dhawan Vs. Jawaharlal Dhawan*, (1993) 3 SCC 406. He submitted that without the marital status being affected or disrupted by the matrimonial court under the Act, the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The Courts below failed to appreciate that the wife's claim to maintenance has to be agitated under Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956. On the other hand, Mr. Deshpande supported the impugned orders.

4. After considering the submissions advanced by the learned Counsel for the parties as also after perusing the decision of the Apex Court in the case of **Chand Dhawan** (*supra*), I do not find any merit in the submission of Mr. Joshi. In paragraph 25, the Apex Court observed thus,

“25. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affection or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining` that status can live in separation from her husband, and 966 whether she is living in that state or not, her claim to maintenance stands preserved in codification under section 18 (1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simplicitor obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on

their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance.”

5. In the present case, in view of the decree passed by the learned trial Judge, the marital status is affected or disrupted. If that is the position then Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be and dependant on the Court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. As admittedly, in the present case, decree is passed by the Courts below is referable to Sections 10 and 13(1)(i-b) of the Act, the Courts below were fully justified in passing the decree of permanent alimony. In view thereof, no question of law much less any substantial question of law arises in this Appeal. Hence, the Second Appeal fails and the same is dismissed. In view of the dismissal of the Second Appeal, nothing survives in Civil Application No.713 of 2015 for stay and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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