

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.1464/2014
IN
SECOND APPEAL NO.616/2014

Sou. Sunita Krishnadev Jadhav

...Applicant

V/s.

Krishnadev Kakasaheb Jadhav & Ors.

...Respondents

Mr. P. R. Yadav for the Applicant.

Mr. Shivaji A. Masal for the Respondent No.1.

CORAM: K.K. TATED, J.
DATED : SEPTEMBER 11, 2015

PC. :

1. Heard the learned counsel for the parties.
2. This Application is made by Plaintiff wife for stay of the operation and implementation of the judgment and decree dated 12/09/2014 passed by the Appellate Court and for direction against Respondent No.1 - Defendant No.1 to pay arrears of maintenance to the Appellant as per order dated 11/07/2013 passed by this court in Writ Petition No.25/2013.
3. In the present proceedings, the Applicant Plaintiff filed Regular Civil Suit No.80/2003 in the court of 2nd Jt. Civil Judge, Junior Division, Vita for an order of maintenance on the ground that the Applicant was a wedded wife of Respondent No.1. In that suit, the

Trial Court framed following issues:

1	Whether Plaintiff proves that she is legally wedded wife of Defendant No.1?	Yes
2	Whether Plaintiff is entitled for relief claimed ?	Yes
3	What order ?	As per final order

4. After considering the evidence on record, the Trial Court decreed the suit by judgment and decree dated 03/05/2012 and directed Defendant No.1 to pay maintenance of Rs.2000/- pm to the Plaintiff from the date of institution of the suit.

5. Being aggrieved by the said decree, the Respondent No.1 preferred Regular Civil Appeal No.367/2012 in the Appellate Court. The Appellate Court framed following points for consideration:

1	Whether Appellants prove that the impugned judgment and decree passed by learned lower court in Regular Civil Suit No. 80/2003 is against law, evidence and good conscience and therefore, require interference ?	Yes
2	What order ?	As per final order

6. The Appellate Court allowed the appeal by judgment and decree dated 12/09/2014 and set aside the decree passed by the Trial Court on 03/05/2012 in Regular Civil Suit No.80/2003. The Appellate Court, in paragraph 10 of the impugned decree recorded that the Plaintiff admitted the knowledge of earlier marriage of Defendant No.1 with a woman named Mala.

7. During pendency of the appeal before appellate court, Defendant No.1 filed Writ Petition No.25/2013 before this court which was disposed of by order dated 11/07/2013 directing the Appellate Court to decide the Regular Civil Appeal within 8 weeks. This court, further directed the Respondent Nos.1 to deposit the amount of Rs.50,000/- towards the arrears of maintenance in the Appellate Court and directed the Plaintiff to withdraw the same. This court, further directed the Defendant No.1 to pay monthly maintenance of Rs.2000/- from August 2013 to the Plaintiff. Paragraph 5 of the said order reads thus:

“5. In view of this, the present writ petition can be disposed of by an order as under:

i) The Appellate Court is directed to decide the Regular Civil Suit No.367 of 2012 within a period of 8 months from the date of first appearance of the parties before him.

ii) The petitioner is directed to deposit an amount of Rs.50,000/- towards arrears of maintenance in the Appellate Court within a period of 3 weeks from today.

iii) The respondent-wife is permitted to withdraw the said amount of Rs.50,000/-.

iv) The petitioner to continue to pay monthly maintenance @ Rs.2000/- p.m. from the month of August 2013 and continue to pay monthly maintenance on or before 10th day of every month.

v) During the pendency of the appeal, there shall

be stay to the decree passed by the Trial Court to the extent of recovery of the amount of Rs.2,00,000/- approximately towards the arrears of maintenance.

vi) It is made clear that if amount of Rs.50,000/- is not deposited within a stipulated period, the stay granted shall stand vacated;

vii) While deciding finally the controversy involved in the appeal, the Appellate Court is directed also to take into consideration the actual amount payable and shall also pass an ultimate order of adjustment by taking into consideration the amount paid by the petitioner. The Appellate Court is directed to decide the controversy on its own merits without being influenced by any observations made before this Court and the statements of parties are recorded without prejudice to their contentions on merits.”

8. As the Defendant No.1 failed and neglected to pay and /or deposit the amount of maintenance, the Plaintiff made Civil Application. The learned counsel for the Applicant submits that the Applicant is a house-wife and she does not have any financial support. It is very difficult for her to maintain her day to day life. Hence, this Hon'ble Court be pleased to direct the Respondent to pay sum of Rs.2000/- pm by way of maintenance and also direct him to deposit arrears of maintenance charges as per the order passed by this court dated 11/07/2013 in Writ Petition No.25/2013. He submits that the Appellate Court erred in coming to the conclusion that the Plaintiff had knowledge about the earlier marriage of Respondent No.1. He submits that the Appellate Court failed to consider the ratio laid down by the Apex Court in the matter of ***Badshah Vs. Sou. Urmila Badsha Godse & Anr. 2014(1) SCC 188***. He submits that in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of

the decree passed by the Appellate Court during pendency of the Second Appeal. He submits that if the Civil Application is not allowed, irreparable loss will be caused to the Applicant Plaintiff.

9. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the Civil Application. He submits that the Appellate Court rightly held that the Plaintiff is not entitled to any maintenance from Defendant No.1 because she had knowledge about the earlier marriage of Defendant No.1. He submits that if on the date of second marriage, the earlier marriage of husband was in existence, then, the second wife is not entitled to any maintenance. In support of this contention, he relies on the judgment of the Apex Court in the matter *Savitaben Somabhai Bhatiya Vs. State of Gujarat and Ors. AIR 2005 SC 1809, Bhausahab @ Sandu s/o. Raghuji Magar Vs. Smt. Leelabai w/o. Bhausahab Magar 2004(1) ALL MR 278* and *Badshah Vs. Sou. Urmila Badshah Godse & Anr. 2014(1) SCC 188*. He submits that the Apex Court, in the matter of Badshah (supra) in paragraph 13.2 specifically held that if second marriage is performed at the time of subsistence of first marriage having full knowledge, then second wife is not entitled to any maintenance. Paragraph 13.2 of the judgment reads thus:

“13.2 Secondly, as already discussed above, when the marriage between Respondent No. 1 and Petitioner was solemnized, the Petitioner had kept the Respondent No. 1 in dark about her first marriage. A false representation was given to Respondent No. 1 that he was single and was competent to enter into martial tie with Respondent No. 1. In such circumstances, can the Petitioner be allowed to take advantage of his own wrong and turn around to say that Respondents are not entitled to maintenance by filing the petition under Section 125, Code of Criminal Procedure as

Respondent No. 1 is not "legally wedded wife" of the Petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Code of Criminal Procedure, Respondent No. 1 would be treated as the wife of the Petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized."

10. On the basis of this submission and the authorities, the learned counsel for the Respondent submits that the Plaintiff is not entitled to any maintenance from Defendant No.1. Hence, there is no substance in the Civil Application, same be dismissed with costs.

11. Heard both sides at length. It is to be noted that in the present proceedings, this court, by order dated 11/07/2013 passed in Writ Petition No.25/2013 directed Defendant No.1 to deposit sum of Rs.50,000/- in the Appellate Court with liberty to the Plaintiff to withdraw the same. The Defendant No.1 failed and neglected to comply with the said order.

12. In the present proceedings, the Trial Court, by judgment and decree dated 03/05/2012 held that the Plaintiff proved that she was legally wedded wife of Defendant No.1 and therefore, the Plaintiff was entitled to maintenance of Rs.2000/- pm. The Plaintiff, in her cross-

examination also specifically stated that she had no knowledge about the earlier marriage of Defendant No.1 with Maya. She further stated in paragraph 2 of her cross-examination that those facts were neither disclosed by Defendant No.1 nor the Plaintiff's parents at the time of her marriage with Defendant No.1. This itself shows that Defendant No.1 constrained Plaintiff to marry by suppressing true facts. Therefore, the authorities relied on by Defendant No.1 referred to hereinabove are not applicable in the facts and circumstances of the present case.

13. The Apex Court in the matter of Badshah (supra) held that the second wife is entitled to maintenance, in case, a fact about the earlier marriage is suppressed by the husband.

14. Considering these facts and the law laid down by the Apex Court and the order passed by this court on 11/07/2013 in Writ Petition No.25/2013, I am of the opinion that the Applicant Plaintiff has made out a case for allowing the Civil Application.

15. Hence, following order is passed:

a. Civil Application allowed in terms of prayer clauses (a) and (b) which read thus:

(a) That this Hon'ble Court be pleased to stay the operation and implementation of Judgment and Order dated 12/09/2014 passed by the Appellate Court.

(b) That this Hon'ble Court be pleased to direct the Respondent No.1 to pay the arrears of maintenance to the Appellant as per this Hon'ble Court's order dated 11/07/2013.

- b. Respondent No.1 - Defendant No.1 to clear the arrears of maintenance amount within 2 months from today, failing which the Plaintiff can make an appropriate Application for execution of this order.
- c. Hearing of the Second Appeal is expedited.
- d. Civil Application stands disposed off accordingly.

16. At his stage, the learned counsel for the Defendant No.1 seeks stay of this order.

17. Considering the facts and circumstances of the case that for last more than one and half year, Defendant No.1 has not paid single pie towards maintenance to the Plaintiff, the request made by Defendant No.1 is rejected.

(K.K. TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.