

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 101 OF 2014
WITH CA/10805/2014 IN AO/101/2014

NARAYAN SANGRAM BIRADAR@MAHAMUNI@CHANDORIKAR
VERSUS
GAYABAI NARAYAN BIRADAR@MAHAMUNI

...
Advocate for Petitioners : Mr. V.S. Bedre
Advocate for Respondent-sole : Mr. M.D. Gitte
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CORAM : V. K. JADHAV, J.
DATED : 29th MARCH, 2016

PER COURT:-

1. Being aggrieved by the judgment and order dated 11.12.2013 passed by the District Judge, Udgir in R.C.A. No. 13 of 2010, the original appellant before the lower appellate court, has preferred this appeal from order to the extent of interim order passed by the lower appellate court directing him to pay monthly maintenance @ Rs.2000/- to the wife from the date of filing of suit i.e. 14.1.2008.

2. Brief facts, giving rise to the present appeal, are as under:-

a) The respondent-wife has instituted R.C.S. No. 18 of 2008 before the learned C.J.J.D. Udgir for grant of maintenance. The appellant-original defendant has resisted the claim by filing his written statement. The issues were framed at Exh.13 by the

trial court. Even respondent-original plaintiff has examined herself and also examined one more witness so also produced certain documents on record. However, the appellant-original defendant's application Exh.41 for permission to cross examine respondent-plaintiff, came to be rejected on the ground that sufficient opportunity was given to him to cross examine her.

b) Thereafter, the appellant-defendant has not made any attempt to lead any evidence. Consequently, the trial court decreed the suit of respondent-plaintiff and thereby held that she is entitled for separate maintenance @ Rs.2000/- p.m. and further kept charge of maintenance on house property. Being aggrieved by the same, the appellant herein preferred R.C.A. No. 13 of 2010. The lower appellate court has partly allowed the said appeal and thereby quashed and set aside the judgment and decree dated 29.1.2010 passed by the trial court in R.C.S. No. 18 of 2008 and remanded the matter to the trial court with direction to allow the appellant-defendant to cross examine the respondent-plaintiff and also to lead evidence in support of his case on condition that the appellant-defendant by way of interim arrangement shall pay maintenance @ Rs.2000/- p.m. to the respondent-plaintiff from the date of filing of suit i.e. 14.1.2008 and that he should also pay all arrears of

maintenance.

c) Being aggrieved to the extent of said condition, the appellant-original defendant has preferred this appeal from order.

3. Learned counsel for the appellant submits that R.C.S. No. 18 of 2008 was almost decided exparte by the trial court. The appellant-defendant had no opportunity to cross examine the respondent-plaintiff and her witnesses. Learned counsel submits that the lower appellate court has therefore, rightly remanded the matter by allowing the appellant-defendant to cross examine the plaintiff and her witnesses and further to adduce evidence in support of his pleadings, however, the condition directing him to pay monthly maintenance from the date of filing of suit is not proper, correct and legal. Learned counsel submits that the respondent-wife is already getting maintenance under section 125 of Cr.P.C. and appellant husband is regularly paying the same. Learned counsel submits that the suit is old one and trial court may be directed to expedite the hearing of suit.

4. Learned counsel for the respondent-wife submits that the lower appellate court by considering the old pendency of the suit, has

rightly directed the appellant-original defendant to pay interim maintenance to respondent-wife from the date of filing of suit while passing the remand order in appeal. Learned counsel thus submits that no interference is called for and the appeal thus liable to be dismissed.

5. It appears that the lower appellate court while remanding the matter to the trial court quashed and set aside the judgment and decree passed in R.C.S. No. 18 of 2008 and further remanded the matter by allowing the defendant to cross examine the plaintiff and to lead evidence in support of his case. However, it appears that the lower appellate court has unnecessarily imposed condition directing the appellant-defendant to pay monthly maintenance by way of interim arrangement of Rs.2000/- p.m. to the respondent-wife from the date of filing of suit i.e. 14.1.2008. Both the counsel accept that the respondent-wife was getting maintenance at the rate of Rs.800/- p.m. initially when the lower appellate court remanded the matter on 11.12.2013 and later on the said maintenance amount came to be enhanced by the Court to Rs.3000/- p.m. In view of this, the condition directing the appellant-husband to pay interim maintenance pending the suit thus liable to be quashed and set aside. Hence, the following order:-

O R D E R

- I. The appeal from order is hereby partly allowed.
- II. The judgment and order dated 11.12.2013 passed by the learned District Judge, Udgir in R.C.A. No. 13 of 2010 is hereby quashed and set aside to the extent of imposing condition that the appellant-defendant by way of interim arrangement pay monthly maintenance of Rs.2000/- to the plaintiff from the date of filing of suit i.e. 14.1.2008 and he should also pay all arrears of maintenance.
- III. The rest of the judgment and order dated 11.12.2013 passed in R.C.S. No. 13 of 2010 stands confirmed.
- IV. The trial court shall dispose of the suit as expeditiously as possible and preferably within a period of six months from today.
- V. The appeal is disposed of.
- VI. In view of disposal of appeal from order, civil application No. 10805 of 2014 is also disposed of.

(V. K. JADHAV, J.)