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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.579 OF 2012
WITH
CIVIL APPLICATION NO.9874 OF 2012

Sakhubai Vithal Waghmode

APPELLANT

VERSUS

Vithal Sampatro Waghmode & others

RESPONDENTS

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Mr. Ram B. Deshpande, Advocate for the appellant

Mr. P.B.Kadam h/f Mr. S.J.Salunke, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 28th JANUARY, 2016

ORDER :

1. Heard learned advocates for the parties.
2. This second appeal has been preferred challenging judgment and order dated 18th April, 2012 passed by District Judge-1, Beed in Regular Civil Appeal No.97 of 2008 whereunder the appeal has been partly allowed, modifying the decree passed by the trial court enhancing the maintenance amount to Rs.2000/- from Rs.1500/- which had been granted by the trial court and keeping charge over the suit properties falling to the share of respondent No.1.

3. Learned advocate for the appellant submits that the appellate court has committed gross error in not at all considering evidence in respect of the yield fetched by the suit property and has been overwhelmed by an order passed in writ petition No.4483 of 2007 by this court, whereunder the high court has enhanced interim maintenance amount of Rs.1500/- to Rs.2000/-. There is no discussion whatsoever, with regard to evidence about income accrued by the suit property. In the circumstances, it is his request, which according to him is reasonable one, to remit the matter for reconsideration to the appellate court.

4. On the other hand, Mr. Kadam, learned advocate holding for Mr. S. J. Salunke, for respondent No.1 contends that the suit properties are of joint family consisting of several members. There is no material produced on record with respect to income being derived from the suit properties. The appellate court has taken into account various aspects involved and has rightly considered that there are outstanding loans over the suit properties. And further it has to be taken into account that there is no material brought before the court by the appellant in order to lend credence to her claim to the amount of maintenance

being claimed.

5. Upon perusal of the impugned order passed in Regular Civil Appeal No.97 of 2008, particularly the reasonings as are appearing, there does not appear to be appreciation of evidence, as is expected from an appellate court. It appears that to a considerable extent the order passed in the regular civil appeal is influenced by the order passed by the high court in writ petition. There does not appear to be proper appreciation of evidence on record. As such, this appears to be a fit case to remand the matter for reconsideration to the appellate court.

6. In the circumstances, the impugned judgment and order dated 18th April, 2012 passed by District Judge-1, Beed in Regular Civil Appeal No.97 of 2008 stands set aside. However, without disturbing the payment of maintenance by respondent No.1 to the appellant at the rate as directed by the appellate court. The appellate court to consider all the aspects involved in the matter, as are expected in regular civil appeal and to look into the same objectively and pass appropriate orders. Having regard to that the litigation pertains to maintenance, it is expected that the regular civil appeal would be taken up expeditiously and disposed of as early as possible, preferably

within a period of one year from today. Second appeal, as such, stands disposed of.

7. In view of aforesaid, civil application No.9874 of 2012 stand disposed of.

[SUNIL P. DESHMUKH, J.]

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