

UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

FAMILY COURT APPEAL NO.34 OF 2009.

Mrs.Shraddha W/o Ajay Shelke,
Age 21 years, Occ.Household,
R/o C/o Shashikant Pralhadrao
Ponde, Deepnagar, 15/3, at
present Plot No.10,C-2,
Aurangabad, Saptashringi
Housing Society, N-7,
Aurangabad. ... Appellant.

Versus

Mr.Ajay S/o Avinashrao Shelke,
Age 26 years, Occ.Service,
At present C/o Mr.Arvind
Waman Shelke, Behind Anand
Hospital, Big India Corner,
Near Maruti Mandir, Sector 2G
Nigdi Pradhikaran,Pune. ... Respondent.

...

Mr.Nikhil Jaju, advocate holding for
Mr.L.B.Pallod,advocate for the appellant.
Mr.Atul M.Karad, with Girish Kulkarni, advocates
for the Respondent.

...

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

Date : 08.07.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. The present appellant has filed Petition U/s 18 of the Hindu Adoptions and Maintenance Act, 1956, seeking maintenance of Rs.25,000/- (Rupees twenty five thousand) p.m. The Family Court partly allowed the said application and granted maintenance at Rs.3,000/- (Rupees three thousand) p.m. to the present appellant from the date of petition. The wife has filed the present appeal being dissatisfied with the quantum of maintenance awarded.

3. Mr.Jaju, learned counsel for the appellant submits that the appellant-wife had filed petition for maintenance U/s 18(1) of the Hindu Adoptions and Maintenance Act, 1956. However, while deciding the said petition, the Court considered the petition as if it is filed U/s 18(2) of the Act of 1956. The relationship between the parties is not disputed. At the relevant time, the Respondent was serving and earning salary of Rs.1,25,000/- (Rupees one lac

twenty five thousand) p.m. The Court has not properly appreciated the aspect of cruelty as put forth by the present appellant. The evidence in this regard has not been properly appreciated. According to the learned counsel, since December 2009, the Respondent is working in Multi National Company and earning more than Rs.1,25,000/- (Rupees one lac twenty five thousand) p.m. The appellant is not in a position to maintain herself and is not doing any work.

4. Mr.Karad, learned counsel for the Respondent submits that from March to December 2009, the Respondent was jobless. The Family Court after appreciating the evidence has rightly come to the conclusion that the allegations of the appellant against the Respondent of cruelty are baseless. The learned counsel submits that no illtreatment was meted out to the appellant at any point of time. Mr.Karad, learned counsel submits that the Respondent has to maintain his age old parents and is required to spend upon their ailments.

5. This Court had asked the learned counsel to take instructions from the Respondent about the averments made by the appellant that the Respondent is serving with Barclay Technologies Ltd. at Hinjewadi, Pune. We had asked the learned counsel to place on record the salary certificate of the Respondent. The learned counsel states that he could not get the salary certificate, however, admitted the amount of salary to be more than Rs.1,25,000/- p.m. as contended by the appellant herein. The learned counsel further submits that the appellant is also engaged in her avocation of Fashion Designing and earning handsome money.

6. We have considered the submissions. The petition for maintenance was filed by the appellant U/s 18(1) of the Hindu Adoptions and Maintenance Act, 1956. The aspect of cruelty and desertion were not germane for decision of the said petition. Naturally, the observations with regard to the said issues would not operate as res-judicata in any other substantive proceedings.

7. It is also not disputed that the appellant and the Respondent are not residing together since 2007-2008. There is nothing on record to show that the appellant is doing some avocation and earning amount to maintain herself. In the evidence adduced, the appellant has stated that she has not completed the Fashion Designing course.

8. Be that as it may, there is nothing on record to consider the appellant has any source of income, whereas the salary of the Respondent admittedly is more than Rs.1,25,000/-p.m. (Rupees one lac twenty five thousand only). The appellant will be entitled to maintenance and the standard of living commensurate to that of the Respondent. Considering income of the Respondent, at present maintenance of Rs.25,000/-p.m. (Rupees twenty five thousand only) would be reasonable. It has come on record that since March 2009, the Respondent was out of service and he has paid the maintenance amount regularly as awarded by the Family Court.

9. Considering the fact that his salary was less earlier, it would be appropriate to direct the Respondent to pay maintenance to the appellant at the rate of Rs.15,000/- (Rupees fifteen thousand only) p.m from the date of order of the Family Court till June 2016 and from July 2016 shall pay maintenance at Rs.25,000/- (Rupees twenty five thousand only) p.m. The arrears shall be paid within a period of four (4) months from today.

10. The appellant shall give Saving Bank account number to the Respondent and the Respondent may deposit the amount of maintenance in the Saving Bank account of the appellant.

11. The Family Court Appeal is accordingly disposed of. No costs.

Sd/-
(K.K.SONAWANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

