

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9186 OF 2016

Prakash S. Randive

.. Petitioner

vs.

State of Maharashtra and anr.

.. Respondents

Mr. Raviraj Gamare for the Petitioner.

Mr. Siddheshwar Kalel, AGP for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 6 SEPTEMBER 2016.

JUDGMENT :-

1] The challenge in this petition is to the order dated 21 January 2016 made by the Family Court, Mumbai enhancing the amount of maintenance payable to the respondent-wife under the provisions of the Hindu Adoptions and Maintenance Act, 1956 (said Act).

2] In the year 2005, respondent No.2-wife of the petitioner instituted a petition for maintenance and other reliefs invoking the provisions of Sections 18 and 20 of the said Act. The Family Court, by order dated 27 June 2008, disposed of the petition by

inter alia, directing the petitioner to pay maintenance at the rate of Rs.800/- per month to the wife and Rs.700/- per month to Atul, son of the petitioner, who was at that time a minor.

3] By further order dated 22 April 2013, the Family Court for cogent reasons enhanced the amount of maintenance to Rs.3000/- per month to the wife and directed lumpsum payment of Rs.20,000/- per year towards educational expenses of the son Atul, who, even at that stage, was a minor.

4] The respondent-wife, by further application dated 13 March 2015 applied to the Family Court for further enhancement in the amount of maintenance. By impugned order dated 21 January 2016, the Family Court has enhanced the maintenance amount payable to the respondent-wife at the rate of Rs.8000/- per month. Aggrieved, the petitioner has instituted the present petition.

5] Mr. Gamare, learned counsel for the petitioner, has submitted that since the maintenance amount had been

enhanced, on previous two occasions, there was neither any jurisdiction nor any case made out for grant of any further enhancement in the amount of maintenance. Mr. Gamare submitted that the Family Court has acknowledged that no maintenance can be awarded in favour of son Atul, since, by now, he has already attained the age of majority. However, the Family Court, by taking into consideration the educational needs of Atul, has enhanced the maintenance payable to the respondent-wife and thereby achieved indirectly what the law prohibits directly. Mr. Gamare also submitted that the petitioner earns salary of hardly Rs.15,000/- per month and therefore, direction for payment of maintenance at the enhanced rate of Rs.8000/- per month, in such facts and circumstances is excessive and disproportionate. For all these reasons, Mr. Gamare submits that the impugned order warrants interference in the exercise of jurisdiction under Articles 226 and 227 of Constitution of India.

6] The contention based upon lack of jurisdiction to entertain successive applications for enhancement of

maintenance amount has no merit. There is no provision under the said Act which bars the entertainment of applications for variation of the maintenance amount on more than one occasions, as long as change of circumstances is pleaded and eventually made good. The orders relating to maintenance, by their very nature, are variable. Therefore, as long as the party seeking variation is in a position to plead and prove change in circumstances, there can be no legal bar to the institution of applications seeking variation in the maintenance amount.

7] This is not a case where the enhanced maintenance is either excessive or disproportionate. The Family Court, upon assessment of the material on record, which comprises oral as well as documentary evidence, has enhanced the maintenance amount. The Family Court has adverted to the correct parameters applicable to such matters. In proceedings for judicial review such as this one, this court is not expected to reevaluate or reassess the material on record, as if it were exercising any appellate jurisdiction. The findings of fact recorded by the Family Court neither suffer from any perversity

nor is this a case where any irrelevant or extraneous material has crept into the decision making process. In such circumstances, there is no case made out to interfere with the quantum of maintenance.

8] However, since the learned counsel for the petitioner seriously contended that there is no material on record for justifying enhanced maintenance or that relevant material produced by the petitioner has been ignored by the Family Court, quite reluctantly, this court, with the assistance of the learned counsel for the petitioner has perused the material on record, with a view to reassess the same. Upon such reassessment, it is quite clear that the findings of fact recorded by the Family Court are fully borne out by the material on record. This is neither a case of '*no evidence*' nor is this a case of perversity in the record of findings of fact.

9] In this case, the oral as well as documentary evidence, not only makes out a case that enhancement in maintenance

amount but further, that the enhanced maintenance awarded by the Family Court is neither excessive nor disproportionate.

10] The respondent-wife has deposed that her marriage with the petitioner took place on 9 April 1989 and stated that there are two children born out of said wedlock. The daughter Pratibha is now married and son Atul stays with her and is currently studying at B.M.N. College, Matunga pursuing the Master of Computer Application (MCA) Course. She has deposed that the petitioner-husband has driven her and the two children from the house and therefore, she was constrained to seek maintenance. She has deposed that earlier she was staying with her mother and brother. However, the mother has expired and it is no longer possible to stay with her brother, who has his own family responsibilities. She has deposed that she does not want to be burden on her brother. She has deposed that she is staying in premises on leave and licence basis, for which she pays licence fee of Rs.3200/- per month in addition to deposit of Rs.30,000/- which she has maintained with the Licensor. She has stated that such amount of compensation and deposit is

borne by her with assistance of her brother and sister, as she receives very meager amount of maintenance. Copy of leave and licence agreement has been produced on record.

11] The respondent-wife has further deposed that though by now, son Atul has attained majority, since he studying for the MCA Course at B.M.N. College, she has to pay for his educational expenses. She has deposed that she has no source of income, other than amount of Rs.3000/- per month, which she receives as maintenance from the petitioner-husband. She has deposed that she has certain gynecological problems and is required to expend considerable amounts on health care. She has also deposed that her son Atul suffers from Kidney stone and there are expenses for his medical care. She has deposed that Doctors have advised operation for removal of kidney stone, but the estimated expenses of Rs.25,000/- are beyond her reach. She has produced medical bills on record which substantiate this position.

12] The respondent-wife has further deposed that the petitioner is Constable in Police Department and is attached to Chembur Police Station. She has deposed that the petitioner's monthly salary is more than Rs.30,000/- per month and the salary is increasing. She has also deposed that the petitioner has various sources of income and has the capacity to pay sufficient maintenance. She has deposed that the petitioner is having one 2 BHK Flat at Navi Mumbai from which he receives income of more than Rs.10,000/- per month. She has deposed that the petitioner also has rooms adjacent to his house, which are also rented by him, for rents of approximately Rs.5000/- per month. She has deposed that the petitioner has agricultural land at his native place in Ahmednagar and is deriving income from the same. She has deposed that besides herself and Atul, the petitioner has no other dependents and is therefore, in a position to pay enhanced maintenance. She has also deposed that there is increase in prices of commodities and cost of living and therefore, the maintenance amount be enhanced to Rs.15,000/- per month. The respondent has also produced documentary evidence in the matter of fees and other expenses

related to Atul's education. She has also produced internet bills, which she has to bear for purposes of Atul's education for the MCA Course, which he attends.

13] In the cross-examination, the respondent-wife has denied suggestion put to her that Atul's education expenses are borne by her sister, who is issue-less. She has also denied suggestion that all the expenses towards marriage of daughter Prathiba were borne by the petitioner. Instead, she has volunteered to depose that it was her father, who has borne such expenses. To the suggestion as to whether she has any documentary evidence to prove that Atul has kidney stones or that Atul needs amounts towards medical care and operation, she has replied in the negative. To the suggestion as to whether she has any documentary evidence to establish that the petitioner has let out flat and rooms and receives rent in excess of Rs.15,000/- per month, she has again replied in negative. To the suggestion as to whether she has any documentary evidence with regard to the agricultural land at Ahmednagar, she has again replied in the negative.

14] The petitioner has deposed that he has borrowed Rs.4 Lacs from office society fund and is repaying said amount by E.M.I. of Rs.13,000/- to Rs.14,000/- per month. The petitioner has also deposed that an amount of Rs.10,000/- per month is being deducted towards LIC premiums and Provident Fund. After all deductions, the petitioner has deposed, that he draw salary of around Rs.12,000/- per month. The petitioner has also deposed that all financial and emotional needs of Atul are borne by his wife's sister, since she has no issues. The petitioner has deposed that his wife does a job near her house and gets handsome salary of more than Rs.10,000/-. He has deposed that she has no dependents and she is qualified and strong healthy woman can earn and maintain herself. He has deposed that all medical papers produced by the wife are bogus. He has also deposed that he has incurred all the expenses for the marriage of daughter Pratibha.

15] In his cross-examination, the petitioner has admitted that he lives at Chembur in the house, which is in the name of his father. He also admitted that his father expired on 11 November

2008. He has deposed that his mother is no longer living and he has no brothers. He has deposed that he has one sister, who is married. He has admitted that the education of his son Atul is still going on. He has admitted that the receipt of fees for MCA Course are true. He has also admitted that the respondent-wife is staying on leave and licence basis and the leave and licence agreement dated 27 November 2015 is true and correct. He has also accepted that the respondent has paid towards deposit, advance and the licence fees. He has deposed that he is presently working as Hawaldar and as per the salary slip, salary for month of October 2015 is Rs.38,399/-. He has deposed that the loan taken by him from the society was when his parents were ill, i.e., having Asthama and T.B.. He has accepted that his father was also an employee of B.M.C. and was drawing pension. He has also admitted that after the death of father, the mother was getting family pension. He has denied that he owns 2 BHK Flat at Navi Mumbai and that one Laxman Mhatre is staying as tenant in the said flat. He has admitted that the prices of essential commodities have increased a lot and the educational expenses of Atul have also increased.

16] As noted earlier, there is no requirement as to reassessment or reevaluate of the material on record whilst exercising powers of judicial review. Nevertheless, at the insistence of the learned counsel for the petitioner the material on record was reassessed as aforesaid. The material aspects deposed to by the respondent wife, have virtually gone unchallenged. The petitioner has not challenged the material statements made by the respondent wife in the course of her examination-in-chief. The suggestions on behalf of the petitioner were to elicit information as to whether the respondent wife was in a position to produce documentary evidence, which, she may have replied in the negative. It is to be noted that there were no suggestions denying the statements made by the respondent wife. The suggestions in regard to documentary evidence, are in fact, matters which are mostly in the exclusive domain of the petitioner. In such a situation, it cannot be said that the petitioner has made any dent in the evidence led by and on behalf of the respondent wife.

17] The material on record, not only makes out a case of change in circumstances, but further justifies the quantum of enhanced maintenance. The petitioner is a Hawaldar in Police Department. Other than the respondent-wife, the petitioner has no other dependents. The petitioner, apart from himself, has no other responsibilities. His parents are not living. His sister is already married. His father was in fact a retired employee from Bombay Municipal Corporation (BMC) and even after his demise, there was family pension which took care of the financial needs of the petitioner's mother. The petitioner's statement that the deductions from his salary are towards repayment of loan taken by him for the purposes of his daughter's marriage, hardly inspires any confidence. In fact, in the deposition, the petitioner has stated that such loan was taken on account of illness of his parents.

18] The material on record also indicates that the respondent wife suffers from certain gynecological problems and is required to expend considerable amounts for her medical needs. The material on record also suggests that the petitioner's son Atul

has problems relating to Kidney Stones and expenses are incurred for this purpose as well. The petitioner's contention that his son Atul must be earning some amount has no basis and therefore cannot be accepted. In fact, the petitioner has himself admitted that Atul is studying in college and considerable expenses are required for such purposes. All such material on record clearly supports the findings recorded in the impugned order.

19] This takes us to the last contention of the petitioner that the enhanced maintenance amount is solely on account of the educational needs of son Atul, who, by now, has attained majority. The petitioner contends that there is no obligation to maintain his son who has attained majority. The impugned order indirectly awards maintenance to Atul, when in fact, such maintenance was impermissible to be directly awarded. There is no merit in this contention, for several reasons.

20] In the first place, the impugned order does not award any maintenance to the son Atul. Maintenance has been awarded

to the respondent wife, who is clearly entitled to the same in terms of the provisions contained in Section 18 of the said Act. The circumstance that in the determination of such maintenance the expenses towards Atul's education may have also been taken into consideration, does not mean that the Family Court has done indirectly, what the law forbids it from doing directly.

21] Secondly, it is to be noted that there is nothing unreasonable on the part of the respondent wife to provide for the education of her son Atul. In fact, such conduct is quite natural, particularly in case of a mother, who is prepared to make several sacrifices, in order that her son obtains some decent education and is in a position to stand on his own feet. In fact, the conduct and the contentions of the petitioner border upon unreasonability.

22] The petitioner on his own, should have volunteered to provide for educational needs of Atul who, despite obviously troubled and deprived childhood, has succeeded in securing

admission to the MCA Course. This was the very minimum which was expected of the petitioner for having brought Atul into this world. Instead, the petitioner insists upon viewing such matters in purely legalistic terms. It is for this reason that it is necessary to clarify that there is no error whatsoever in the impugned order made by the Family Court in awarding enhanced maintenance to the respondent wife, who, at the cost of considerable deprivation to herself, also contributes to the education of Atul, who by now, has attained the age of majority.

23] On the basis of the material on record, it is not difficult to see that the respondent wife will go to the extent of depriving herself of even basic necessities and comforts, in order the educational needs of Atul are at least partially met and so that Atul is in a reasonable position to stand on his own feet and thereafter live his own life. If the enhancement of maintenance is interfered with, it is not difficult to imagine that a considerable chunk of the maintenance amount of Rs.3,000/- will go to providing for the educational needs of Atul, leaving thereby no option to the respondent wife and perhaps, Atul as

well to suffer from utter destitution. This is not the manner in which beneficial provisions of the Act are to be interpreted. Such an interpretation will in fact, frustrate the beneficial provisions of the said Act. The extra ordinary and equitable jurisdiction of this court under Articles 226 and 227 of the Constitution of India is to promote substantial justice and not to perpetuate injustice. Even assuming that some legal point is made out by the petitioner, a writ court is not bound to interfere if the ultimate result will demolish substantial justice and perpetuate injustice.

24] In *Jayvardhan Singh Chapotkat vs. Ajayveer Chapotkat*¹, learned Single Judge of this court has held that a father, who is well placed financially is bound to bear the educational expenses of his son until he completes his education.

25] In *T. Vimala and ors. Vs. Ramakrishnan*², the learned Judge of the Madras High Court has held that every father is

1 2014 SCC Online Bom. 465

2 Cri.R.C. (MD) No. 180 of 2014 decided on 24 June 2016

bound to provide good education to his children and such obligation to meet educational expenses of his children cannot be excluded from the components of maintenance. At paragraphs 16 to 18, the learned Single Judge has observed thus :

“16. Nowhere in [Cr.PC.](#), what 'maintenance' means has been stated. What its contents has been, what its 'components' has been stated. But it does not mean that we cannot state, what it means. It is our duty to interpret the law. We (Court) cannot simply blame the law makers that they have poorly enacted, drafted the law. It must be interpreted in such a way that the purpose for which the law has been enacted. Otherwise, it will be frustrated.

17. The learned Principal Session Judge, Dindigul preferred literal interpretation than purposeful interpretation. He read [Section 125 Cr.PC.](#) couched in English language by referring to Oxford English Dictionary, but he did not look into the heart of the matter.

18. The very purpose of [Section 125 Cr.PC.](#) is also to protect the children from want of roof, food, clothing and necessities of life. Education is an important aspect in children's life. Amounts need to be spent for it. Those expenses are educational expenses. Every father is bound to provide a good education to his children. No father is expected to produce a criminal or a disorderly person. Thus, he has to bear the educational expenses of his children. Children have to maintain their education by meeting the educational expenses. Even a man on the pavement will be dreaming of his children becoming a qualified person in life. Therefore, the obligation of a father

to maintain, to meet the educational expenses of his children cannot be excluded for the component of maintenance. Section 125 Cr.P.C. is not only for food for life, it should also be for food for thought. Otherwise, so far as the children are concerned, we will be doing violence to the very object of Section 125 Cr.P.C.”

26] In ***Chaturbhuj Vs. Sita Bai***³, the Hon'ble Supreme Court has held that the expression '*unable to maintain herself*' in Section 125 of Cr.P.C. is required to be interpreted in a realistic manner. In an illustrative case where the wife survived by begging, it would not amount to her ability to maintain herself. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In ***Bhagwan Dutt v. Kamla Devi***⁴ it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of the family. The expression '*unable to maintain herself*' does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.

3 (2008) 2 SCC 316

4 1975 (2) SCC 386

27] In *Captain Ramesh Chander Kaushal v. Veena Kaushal*⁵, the Hon'ble Supreme Court has held that the provisions in Section 125 of Cr.P.C. are meant to achieve a social purpose. The object is to prevent vagrancy and destitution. The provision is for speedy remedy for supply of food, clothing and shelter to a deserted wife. It gives effect to fundamental and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

28] In *Shamima Farooqui Vs. Shahid Khan*⁶, the Hon'ble Supreme Court has held that inherent and fundamental principle behind Section 125 of Cr.P.C. is for the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. This principle of sustenance gets more heightened when the children are with her. Sustenance does not mean mere survival. A woman who is constrained to leave

5 (1978) 4 SCC 70

6 (2015) 5 SCC 705

matrimonial home, should not be allowed to feel that she has fallen from grace and move hither and thither for arranging sustenance. As per law, she is entitled to lead a life in similar manner as she would have lived in the house of her husband. Maintenance under Section 125 of Cr.P.C. has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. At paragraph 19, the Hon'ble Supreme Court observed thus :

“19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance”.

29] In ***Bhuwan Mohan Singh Vs. Meena and ors.***⁷, the Hon'ble Supreme Court at paragraph 2 has observed thus:

⁷ (2015) 6 SCC 353

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds”.

30] In ***Badshah Vs. Urmila Badshah Godse and anr***⁸, the Hon'ble Supreme Court has commended purposive interpretation to the provisions of law which deal with

8 (2014) 1 SCC 188

maintenance. The purpose is to achieve '*social justice*'. In interpreting provisions relating to maintenance, the court is expected to bridge the gap between law and the society. Provisions relating to maintenance fall in the category of legislation which is aimed at empowering the destitutes and achieving the social justice, equality and dignity of the individual. In dealing with such cases, there is necessity for drift from the '*adversarial litigation*' to '*social context adjudication*' which is the need of the hour. The Hon'ble Supreme Court has observed that law regulates relationship between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law to achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in

social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

31] Applying the aforesaid principles to the social reality of today, it will have to be accepted that the respondent wife in the present case, if left to fend for herself on maintenance of Rs.3,000/- per month, will in all probabilities, be forced to expend the major portion of such maintenance amount only to providing for the educational needs of son Atul. As noted, Atul is in college and has no independent source of income. At this stage, it is unlikely that the respondent wife will cater to her own needs, however basic the same may be, if, the same interferes with the educational needs of Atul. If, therefore, in determining the quantum of enhanced compensation, due regard is had to this aspect, the same will amount to bridging the gap between the law and a social reality. Such an

interpretation will advance the cause of social justice. As observed in the case of *Captain Ramesh Chander Kaushal* (supra), the brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.

32] Applying the aforesaid principles to the facts and circumstances of the present case, there is no case made out to interfere with the impugned order. This petition is accordingly dismissed. Since no notice had been issued to the respondent wife, there shall be no order as to costs.

33] After this order was pronounced, learned counsel for the petitioner has submitted that liberty may be granted to the petitioner to apply for variation in the maintenance amount, once Atul completes his education. Such request is reasonable. Orders in relation to maintenance, by very nature, are never

final. Parties are always at liberty to apply for variation upon making out a case of change in circumstances. Accordingly, in case there is any change in circumstances, parties are always at liberty to apply for variation.

dinesh

(M. S. SONAK, J.)