

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 13 OF 2017
WITH
CIVIL APPLICATION NO. 3155 OF 2017

Meena w/o. Vinod Kulkarni,
Age 45 years, Occu. Household,
R/o. At present at C/o. Anant
s/o. Manoharrao Patki,
Gopalnagar, Sangvi,
Tq. & Dist. Nanded.

....Appellant.

Versus

Vinod s/o. Trimbakrao Kulkarni,
Age 48 years, Occu. Private Service,
at Kohinoor Cattle Feeds, MIDC, Nanded
R/o. Dnyaneshwarnagar, CIDCO,
New Nanded, Tq. & Dist. Nanded.

....Respondent.

Mr. A.A. Mukhedkar, Advocate for appellant.

Mr. S.S. Gangakhedkar, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.**

DATED : November 6, 2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is admitted. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal. This Court has perused the original record.

2) The appeal is filed to challenge the judgment and decree of Family Court Nanded delivered in Petition No. C-6/2014. The

petition was filed under the provisions of Hindu Adoption and Maintenance Act for maintenance of Rs.15,000/- p.m. by present appellant. On merits, the Trial Court has dismissed the petition.

3) It is the case of appellant/wife that she was given in marriage to present respondent Vinod on 6.5.1998 and she cohabited with respondent in his house at Dnyaneshwar Nagar, CIDCO, Nanded. It is her case that one son by name Chinmaya was born to her out of this wedlock and after 3-4 months of birth of Chinmaya, respondent started giving illtreatment to her on petty grounds.

4) It is the case of wife that respondent/husband was asking her to bring money from her parents for even household expenses. It is her case that as she has only mother who is widow and brothers who are receiving education, she could not meet this demand and so, illtreatment was given to her and ultimately, in the month of May 2001, she was driven out of matrimonial house with son Chinmaya by respondent. It is her case that she made many attempts through relatives to convince respondent to accept her back in matrimonial house, but respondent refused to accept her back in the matrimonial house. It is her case that since May 2001 no provision is made by respondent for her maintenance and for the

maintenance of Chinmaya. It is her case that she has no source of income, she is unable to maintain herself and Chinmaya. It is her case that she is suffering from diabetics and husband is not providing anything even for treatment.

5) It is the case of wife that the husband is employed in Kohinoor Cattle Feeds Private Limited and his monthly salary is around Rs.15,000/-. It is her case that husband owns agricultural land and he is getting handsome income from agriculture. She has given the numbers of the lands which are standing in the name of husband. It is her case that husband sold his share in land Gat No. 657 situated at Daithana and has collected the amount of Rs. eleven lakh as consideration. It is her case that annual income of the husband is more than Rs. five lakh and he is in a position to give Rs.15,000/- p.m. to her as maintenance. It is her case that she requires such amount as she is required to maintain herself, she is required to maintain Chinmaya and she is required to spend on education and other expenses of Chinmaya. It is her case that Chinmaya requires at least Rs.5000/- to 7000/- p.m. for expense. It is her case that as per the status also, she requires to get Rs.15,000/- p.m. for maintenance.

6) The husband filed written statement at Exh. 15. He

admitted the relationship. But, he denied that he drove the wife out of the matrimonial house and he has neglected and refused to maintain wife. He has denied that his income is more than Rs. four lakh from agriculture and he is getting Rs.15,000/- by way of salary.

7) It is the case of husband that the wife cohabited hardly for few months after the marriage and she was insisting him to live separate from his elder brother. It is his case that he was living with his mother and elder brother at Nanded. It is his case that ultimately due to pressure of wife, he obtained separate premises at Nanded and there, he started cohabiting with wife. It is his case that there also the wife cohabited hardly for a month. It is his case that the wife was very adamant and she wanted to live as per her whims and wishes. It is his case that in the year 2000 when plaintiff/wife became pregnant, her two brothers took her from matrimonial house under pretext that they were taking her for delivery. It is his case that he was ready to take care of her during the period of delivery, but they refused to allow him to do so. It is his case that he used to pay amount for educational expenses of Chimnaya. It is his case that he made many attempts to bring the wife back to the matrimonial house, but the brothers and mother of wife refused to send her back to matrimonial house. He has contended that at the time of Diwali of the year 2002, he made sincere efforts to bring back wife to

matrimonial house, but the efforts were in vain.

8) It is the case of husband that he gets salary of hardly Rs.4000/- p.m. and from that salary, he is required to pay rent of Rs.2000/- p.m. and so, he is not in a position to pay separate maintenance to wife and issue. It is his case that there is agricultural land, but he and his two brothers have share in the agricultural land. It is his case that his income from agriculture land is Rs.5,000/- to Rs.10,000/- p.a. It is his case that they were required to sell some portion of land Gat No. 657 as they were not able to supervise the cultivation of the land and by using the sale proceeds, they have purchased some property, house in Nanded for residence purpose.

9) On the basis of aforesaid pleadings, issues were framed by the Trial Court. Both the sides gave evidence. The Trial Court has given finding that the wife has failed to prove that she was neglected or deserted by the husband. Due to such finding, the proceeding is dismissed by the Trial Court.

10) The record shows that the wife examined herself before Trial Court and she placed reliance on some documents like 7/12 extracts. On the other hand, husband examined himself and he produced salary certificates issued by Kohinoor Feeds and Fats

Limited.

11) The evidence on record shows that the husband was ready to take wife back to the matrimonial house and even during cross examination when offer was given to wife to return to matrimonial house, she replied that she has no desire to return to matrimonial house. The pleading of the wife with regard to the allegations made against husband are very vague. When on one hand, she contends that husband is getting handsome income from agriculture and he was earning atleast Rs.15,000/- p.m. by way of salary, she contended that husband was asking her to bring some money from parents for household expenses. Her version shows that she has no record to show that she had made an attempt to return back to matrimonial house, when on the other hand husband is still ready to take her back to matrimonial house. She admits that husband had taken premises on rent basis near Gurudwara Nanded for their separate residence. She admits that she had returned to her parental house with her brothers when she was pregnant. She admits that the husband had attended Munj ceremony of Chinmaya which was performed in the year 2011 at Parli. She admits that for that function, husband had brought necessary articles like clothes and other things. Thus, on one hand husband is still ready to take back wife for resuming cohabitation and on other hand, the wife is

not ready to return to matrimonial house and she has not given any justification for that. The husband was keeping contact with the family and he attended one function in the year 2011. The evidence of wife shows that after birth of Chinmaya, she started living separate from husband. Thus, after about 10 years of separate residence, she filed the proceeding for maintenance. She did not approach police and she has no allegation of specific illtreatment from the husband. Due to these circumstances and the evidence given by husband in rebuttal that he is still ready to resume cohabitation, but wife is adamant and she is not ready to return to matrimonial house, the Trial Court has held that there is clear probability that wife is not ready to return to the matrimonial house. Thus, the wife failed to prove that she is deserted by the husband or the husband has refused and neglected to maintain her. For living separate and for getting maintenance while living separate, the wife is expected to make out the case of aforesaid nature. She is expected to give justification. No justification is given by the wife. Due to this reason, this Court holds that the Trial Court has not committed any error in refusing maintenance to the wife.

12) The reasoning given by the Trial Court does not show that the claim of the issue is considered by the Trial Court. If the pleading of the petition is read as a whole, it can be said that the

needs of the minor son Chinmaya are mentioned and it is also mentioned that he requires maintenance amount from the husband. Under section 20 of the same Act the minor can get maintenance. Though the section was not specifically mentioned and minor was not specifically arrayed as plaintiff/petitioner in the proceeding, the Trial Court ought to have considered the claim of son also in view of the pleading in the petition.

13) The defences available to respondent/husband to avoid maintenance to wife are not available when there is claim of maintenance for minor issue. There is the evidence on the requirement from the appellant/mother of the minor. The cross examination of the respondent does not show that he had sent any money for maintenance of the child. He does not even know the institution where his son is taking education. He does not know as to how the son is spending on education. He does not know as to how many marks son has secured in 10th standard. Thus, even when since 2001 the son is living separate, the present respondent did not make any arrangement for his maintenance. It is the duty of respondent to make such arrangement.

14) It appears that nobody from the employer's office was examined to prove the salary certificates which are exhibited as

Exhs. 53 and 54. In the year 2012 gross salary was shown as Rs.4,250/- and in the year 2016, gross salary was shown as Rs.6,000/-. The husband is a commerce graduate. The 7/12 extracts produced on record show that he has share in the agricultural land and he owns land admeasuring more than 2 H. The 7/12 extracts also show that in the land both Rabbi and Kharip crops are being taken. He has admitted that by spending the sale proceeds, he has purchased house in Nanded. Thus, he is not required to spend on rent. In those days, ordinary labour could earn more than Rs.200/- per day. Considering all these circumstances, this Court holds that the husband is in a position to give atleast Rs.3,500/- p.m. to son Chinmaya for his maintenance. As per the status of the parties also, son Chinmaya requires such amount. This Court holds that the appeal needs to be partly allowed to give such relief in favour of son Chinmaya, who is minor. In the result, following order :-

ORDER

- (I) The appeal is partly allowed.
- (II) Respondent Vinod Trimbakrao Kulkarni is hereby directed to pay monthly maintenance of Rs.3,500/- (Rupees three thousand five hundred) to son Chinmaya s/o. Vinod Kulkarni from the date of proceeding i.e. from 20.9.2012 till Chinmaya attains majority.
- (III) The arrears amount is to be deposited by the

respondent/husband within two months from today. The amount which becomes due in future is to be deposited before 10th day of every month when the amount becomes due. If the arrears amount is not deposited within prescribed period, the amount shall carry interest at the rate of 8% p.a.

(IV) The claim of the appellant/wife Meena w/o. Vinod Kulkarni is rejected.

(VI) In view of disposal of Family Court Appeal, Civil Application stands disposed of.

(VII) Decree is to be prepared accordingly.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

SSC/