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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.495 OF 2007

Jagdish s/o Ramdas Sonwane,
Age : 37 years, Occ. Service,
R/o C/o Lions Pioneer High School,
Bhaudaji Road, Matunga,
Mumbai 19
R/o Ulhasnagar, No.4,
District Thane

..APPELLANT
(Ori. Defendant)

VERSUS

Sau. Vanmala Jagdish Sonwane,
Age 33 years, Occ. Household,
R/o C/o Gulchand Amrut Baviskar,
Namdeonagar, Behind Khadke
Chawl, Jalgaon, District Jalgaon

..RESPONDENT
(Ori. Plaintiff)

Mr V.D. Hon, Senior Advocate, instructed by Mr A.V. Hon, Advocate for
appellant;
Mr Vishal V. Udhan, Advocate holding for Mr B.R. Kedar, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 2nd August, 2017

ORAL ORDER

The present appellant is defendant in Special Civil Suit No.41 of 2001 instituted by respondent for maintenance under Section 18 of the Hindu Adoption & Maintenance Act.

2. The Trial Court, having regard to the source of income of the present appellant decreed the suit and ordered payment of maintenance at the rate of Rs.600/- per month from the date of notice i.e. 5th April, 1999

(2)

vide judgment and decree dated 14th August, 2003.

3. The respondent-plaintiff, feeling aggrieved by the aforesaid judgment and decree preferred an appeal before learned District Judge, Jalgaon being Civil Appeal No.218 of 2003, which came to be partly allowed vide judgment and decree dated 29th January, 2007 thereby enhancing maintenance from Rs.600/- to Rs.2,500/- per month along with arrears. Thus, the present Second Appeal.

4. Mr Hon, learned Senior Counsel appearing on behalf of the appellant would canvass following grounds :-

(a) Once under Section 127 read with Section 125 of the Code of Criminal Procedure (for short "CrPC") the respondent-plaintiff is getting Rs.3,500/- per month towards maintenance, in such eventuality whether the judgment and decree of the lower appellate court enhancing the maintenance is sustainable ?

(b) Whether the award of maintenance of Rs.2,500/- per month, in the backdrop of the respondent already getting amount of Rs.3,500/- under Section 127 of the CrPC is in proportion to the known source of income of the appellant ?

(3)

5. So as to substantiate his contentions, Mr Hon has relied upon the evidence of the parties, particularly the documentary evidence in relation to the source of income of the appellant as a Teacher serving in a private school and meager holding of agricultural land by the parents of the appellant. According to him, the appellant is resident of Mumbai and comparatively required to spend more amount on parents and himself for maintaining in a place like Mumbai. He would then urge that looking to the fact that under section 127 of the CrPC already Rs.3,500/- per month is being allowed to the respondent-wife, the amount of Rs.2,500/- be reduced and the order of the Trial awarding maintenance of Rs.600/- per month Court be restored. Mr Hon also tried to canvass that since the appellant is paying Rs.3,500/- per month towards maintenance under Section 127 of the CrPC which is more than the amount of Rs.2,500/- ordered by the learned District Judge in appeal, the judgment of the lower appellate court is also required to be reversed on that count.

6. Per contra, learned Counsel appearing on behalf of the respondent would urge that though the respondent is receiving amount of Rs.3,500/- per month, still the said amount has to be considered as the amount in addition to the amount of maintenance ordered by the lower appellate court. According to him, the amount of maintenance of Rs.2,500/- per month awarded under Section 18 of the Hindu Adoption and Maintenance Act, 1956 is irrespective of the maintenance awarded under Section 127 of the CrPC and based on the known source of income of the appellant and as such sought dismissal of the appeal.

(4)

7. Considered rival submissions.

8. The respondent-plaintiff, so as to demonstrate the source of income of the present appellant-defendant has placed reliance on the 7/12 extract Exhs.28 and 29 and salary certificate Exh.33. The present appellant produced his salary certificate Exh.34, 7/12 extracts Exhs.36 and 37, judgment in maintenance case Exh.43 and other documents viz. Related to loan, the salary certificate Exh.57 and 7/12 extracts Exhs.36 and 37.

9. The Trial Court considered the claim of the present respondent and awarded maintenance of Rs.600/- per month having regard to the fact that the monthly salary of the present appellant is Rs.12,500/- and there is deduction of about Rs.4,000/- towards loan. The Trial Court also considered the maintenance awarded under Section 127 of the CrPC and proceeded to ward maintenance of Rs.600/- per month to the respondent-wife.

10. The lower appellate court, while re-appreciating the said issue has noted that there is no independent source of income to the respondent-plaintiff wife, though a plea to that effect was raised. The lower appellate court then considered the nature of employment of the present appellant, his net salary from salary certificates Exhs.33, 34 and 57 and observed that the appellant is getting net salary of Rs.9,766/- per month. The lower appellate court then considered that the agricultural land is cultivated by the parents of appellant and he is not getting any income out of the same.

(5)

It further considered that the appellant is getting maintenance of Rs.1,000/- per month in the proceedings under Section 125 of the CrPC and proceeded to enhance maintenance to Rs.2,500/- per month.

11. The fact that maintenance of the present respondent-wife awarded under Section 125 of the CrPC to the tune of Rs.1,000/- per month has been enhanced to Rs.3,500/- per month is not in dispute. In such an eventuality, whether the amount of maintenance of Rs.2,500/- per month as awarded by the lower appellate court is just and proper is an issue which is required to be considered.

12. Looking to the fact that the appellant must have got increase in the salary as his salary of the year 2000 was considered, in my opinion, the award of maintenance of Rs.2,500/-, in addition to Rs.3,500/- per month awarded under Section 127 of the CrPC calls for a little interference. Considering the fact that the respondent is already getting maintenance amount of Rs.3,500/- per month under section 127 of the CrPC, the amount of Rs.2,500/- enhanced by the lower appellate court appears to be unreasonable. As such the said amount is reduced to Rs.1,500/-, instead of Rs.2,500/- per month.

13. The aforesaid reduction is based on the proportion viz. The enhancement granted under Section 127 of the CrPC and the known source of the income of the appellant viz. his salary.

(6)

14. Thus, the Second Appeal, to above extent, stands allowed and disposed of.

15. In view of disposal of second appeal, pending Civil Application does not survive and stands disposed of.

16. At this stage, Mr Udhan, learned Counsel appearing on behalf of the respondent-plaintiff would urge that the provisions of section 25 of the Hindu Adoption and Maintenance Act provide for alteration of the amount of maintenance on change of circumstances. According to him, appellant's salary has gone up, which gives a right to respondent to apply for alteration of the amount of maintenance. He seeks liberty to that effect.

17. Though the aforesaid liberty is objected on behalf of the appellant-husband, still having regard to the statutory provisions viz. Section 25 of the Hindu Adoption and Maintenance Act, 1956, right is already created in a party in case there is change in circumstances for alteration of amount of maintenance. In view of statutory provision, the objection of the appellant for grant of liberty stands rejected. The respondent-plaintiff will be at liberty to apply for alteration of amount of maintenance, provided she demonstrates change in circumstances before the competent forum.

(N.W. SAMBRE, J.)

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