

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

**Family Court Appeal No. 29 of 2009**

Mangala w/o Jaikumar Magar,  
Age 54 years,  
Occupation : Household,  
R/o "Abhijit", 64, Builders Society,  
Nandanvan Colony, Aurangabad  
Taluka and District Aurangabad. **.. Appellant.**

**Versus**

Jaikumar s/o Khelnath Magar,  
Age 64 years,  
Occupation : Editor/Writer/  
Ph.D. Research Guide,  
R/o "Abhijit", 64, Builders Society,  
Nandanvan Colony, Aurangabad,  
Taluka and District Aurangabad. **.. Respondent.**

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Shri. Rajendra Deshmukh, Advocate, for appellant.

Shri. Anand Chawre, Advocate, for respondent.

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**With**

**Family Court Appeal No. 20 of 2011**

Jaikumar Khelnath Magar,  
Age 62 years,  
Occupation : Retired,  
R/o "Abhijit", 64, Builders Society,  
Nandanvan Colony, Aurangabad,  
District Aurangabad. **.. Appellant.**

**Versus**

Mangala Jaikumar Magar,  
Age 52 years,  
Occupation : Household,  
R/o Abhijit, 64, Builders Society,  
Nandanvan Colony, Aurangabad. .. **Respondent.**

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Shri. R.R. Suryawanshi, Advocate, for appellant.

Shri. Rajendra Deshmukh, Advocate, for respondent.

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**With**

**Family Court Appeal No. 31 of 2017**

Mangal w/o Jaikumar Magar,  
Age 63 years,  
Occupation : Household,  
R/o 'Abhijit', 64, Builders Society,  
Nandanvan Colony, Aurangabad,  
Taluka and District Aurangabad. .. **Appellant.**

**Versus**

Jaikumar s/o Khelnath Magar,  
Age 73 years, Occupation : Pensioner,  
R/o Sharavati Housing Society,  
Plot No.6, 2718, Dahanukar Colony,  
Kothrud Pune,  
Taluka and District Pune. .. **Respondent.**

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Shri. Rajendra Deshmukh, Advocate, for appellant.

Shri. Anand Chawre, Advocate, for respondent.

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**Coram: T.V. NALAWADE &  
A.M. DHAVAL, JJ.**

**Date: 21 November 2017**

**JUDGMENT (Per T.V. Nalawade, J.):**

- 1) Family Court Appeal No.31 of 2017 is admitted.
- 2) Family Court Appeal No.29/2009 is filed by original petitioner, wife to challenge the judgment and decree of Proceeding No. C-26/2006 which was pending in Family Court Aurangabad. The challenge is limited only to the quantum of maintenance. Family Court Appeal No.20/2011 is filed by the husband to challenge the decision given Family Court in Proceeding No. A-261/2006 which was filed by wife under section 10 of the Hindu Marriage Act for judicial separation. Decree of judicial separation is given in favour of the wife on the ground of cruelty. Proceeding No.A-261/2006 and No. C-26/2006 were decided by Family Court Aurangabad by common judgment but the husband has not challenged the decree given of maintenance under the provision of Hindu Adoption and Maintenance Act. Both the sides are heard. Original record was called and that record is perused by this Court.

3) The submissions made and the record of the proceeding of Family Court Appeal No.31/2017 pending before this Court shows that on the basis of decree given to the wife of judicial separation, she had claimed divorce under the provision of sections 13(i-a) (i-b) and (1-A)(i) of the Hindu Marriage Act and divorce is given to the wife by Family Court Aurangabad by decision dated 23-12-2016. This decision given in Proceeding No. A-347/2014 is not challenged by the husband. Family Court Appeal No.20/2011 was filed on 7-4-2010 when the decree of judicial separation was given on 20-8-2009. The proceeding for divorce was filed by wife on 7-8-2014. The proceeding was contested by husband and on merits decree of divorce is given by Family Court. Thus, the circumstance that decree of judicial separation was given in favour of wife and on that basis the wife was claiming decree of divorce is considered by Family Court and then the decree of divorce is given. No stay was given by this Court to the proceeding which was filed by wife for divorce and the decision of divorce is not challenged by the husband. In view of these circumstances, the challenge of the husband to the decree of judicial

separation cannot be considered. Due to these circumstances, the appeal of the husband bearing Family Court Appeal No.20/2011 needs to be dismissed.

4) On the point of quantum of maintenance, evidence was given by wife in Proceeding No. C-26/2006. There is record in respect of income of the husband. It is not disputed that the wife had no source of income. Both are highly educated. Unfortunately, the dispute started between them when the husband had crossed the age of 60 years and the wife had crossed the age of 50 years. When the proceeding for maintenance was decided, the husband had retired from service as a Lecturer. In the year 2006 monthly pension of the husband was more than Rs.18,000/-. He did not dispute that he had written at least 80 books for curriculum prescribed by the State Government for primary schools. He was appointed on various Boards and Committees due to his academic career and he was getting honorarium. In view of these circumstances the trial Court has held that the income of the husband from other sources per annum was Rs.1.5 lakh. Thus the monthly income of the husband was more

than Rs.25,000/- and after considering this income the Family Court has granted monthly maintenance of Rs.8000/-.

5) Considering the age of the wife and the fact that she is living alone, the expenses under other head like medical expenses etc. need to be considered and she is entitled to spend as per the status. It is brought on the record that from the income made by the husband he had purchased flats and plots. It was submitted by the learned counsel for the husband that one flat was purchased in a cooperative housing society by the husband in the name of the wife but after starting of the dispute she sold it. He submitted that though the consideration was shown as Rs. six lakh, the wife must have received consideration of around Rs. twenty lakh and this circumstance needs to be considered while fixing the maintenance. It is true that there is such record and this circumstance needs to be considered. However, needs of the wife and the resources still available to the husband of income need to be considered. In view of all these circumstances this Court holds that the wife is entitled to get Rs.10,000/- per month

by way of maintenance. This amount is fixed considering the possibility of claiming maintenance by wife from the issues who are major and who are married. Thus the appeal filed by the wife needs to be allowed partly.

6) Family Court Appeal No.31/2017 is filed by the wife to challenge the decision of the Family Court given in Petition No. A.347/2014 which was filed by the wife for getting relief of injunction in respect of the property where she is living. The trial Court has refused the relief of injunction by holding that the property/flat situated in Abhijit, 64, Builders Society belongs to the husband and there is no vested right as such to the wife in the flat. The circumstance that the Family Court was giving divorce to the wife in a proceeding filed under section 13(1-A) (i) of the Hindu Marriage Act, 1955 is considered by the Family Court. Thus, on one hand the wife was seeking dissolution of the marriage and on the other hand she was seeking injunction against the husband to prevent him from entering the flat standing in his name.

7) During arguments learned counsel for the wife, appellant submitted that relief of the nature of injunction

is given in the proceeding filed under the Protection of Women from Domestic Violence Act by the wife bearing Criminal Misc. Application No.1108 of 2009 before the Judicial Magistrate, First Class, Aurangabad and this decision of the Judicial Magistrate is confirmed by the Sessions Court Aurangabad in appeal and so the wife is not interested in prosecuting the matter. In view of this submission made by the learned counsel for the appellant, wife, the appeal needs to be disposed of as dismissed. In the result, following order :

**Order**

- i) Family Court Appeal No.31/2017 is dismissed.
- ii) The appeal of the husband bearing Family Court Appeal No.20/2011 is dismissed.
- iii) The appeal of the wife bearing No.29//2009 is partly allowed. The monthly maintenance granted in favour of the wife by Family Court Aurangabad is enhanced to make it Rs.10,000/- per month and the amount is to be recovered from the date of decision of the Family Court i.e. 20-8-2009. Decree be prepared accordingly.

Sd/-  
**(A.M. DHAVAL, J.)**  
rsl

Sd/-  
**(T.V. NALAWADE, J.)**