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

**SECOND APPEAL NO. 41 OF 2013
WITH
CIVIL APPLICATION NO.680 OF 2013**

Rajendra s/o Govindrao Shimpi,
Age: 49 years, Occu: Service,
R/o. Junagaon, South Faliya,
Fort Songad, Tq. Songad,
Dist. Tapi (Gujrath State)

..APPELLANT
(Orig. Defendant)

VERSUS

Sau. Sunanda Rajendra Shimpi,
Age: 44 years, Occu: Household,
C/o Bye Lane between Lane No. 4 and 5,
Near Kisan Batti Khunt, Dhule,
Dist. Dhule

..RESPONDENT
(Orig. Plaintiff)

Mr Sanket Suryawanshi, Advocate holding for Mr N. B. Suryawanshi,
Advocate for appellant;
Mr Sanket A. Kulkarni, Advocate holding for Mr C. R. Deshpande, for
respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 2nd August, 2017

ORAL ORDER:

Present appellant is original defendant in Special Civil Suit No.14 of 2006, instituted by respondent-plaintiff before Civil Judge Senior Division, Dhule, seeking maintenance.

2. It is claimed by respondent-plaintiff that her marriage with appellant took place on 24th November, 1986 as per rituals followed in Hindu religion. However, the couple was not blessed with any issue, which forced the

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present respondent to stay at her parental house from 13th February, 1991.

3. It is claimed by respondent that the present appellant earns substantial amount and as such she sought Rs.10,000/- per month towards maintenance with arrears for last three years.

4. The claim made in the suit was decreed by learned Civil Judge Senior Division, Dhule, thereby directing payment of maintenance of Rs.1,500/-, arrears of Rs.54,000/- for last three years, with adjustment of Rs.12,000/- towards maintenance ordered by learned Judicial Magistrate First Class.

5. The respondent preferred Civil Appeal being 89 of 2009 aggrieved by inadequate quantum of maintenance awarded, whereas Civil Appeal No.91 of 2009 was preferred by the present appellant. The said appeal of present respondent was allowed, whereas appeal of the present appellant was dismissed on 8th February, 2012 by the learned Ad hoc District Judge-1, Dhule. The learned District Judge modified the decree passed by the Trial Court enhancing maintenance to Rs.2,250/- inclusive of Rs.1,200/- awarded by Judicial Magistrate First Class, Dhule with arrears of Rs.81,000/- for last three years after adjusting the payment received by the respondent under Section 125 of the Code of Criminal Procedure. Thus, the present second appeal.

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6. Learned Counsel appearing on behalf of the appellant would urge that the lower appellate Court has failed to consider the claim put forth by the appellant, particularly for determining the entitlement of the respondent to the maintenance as claimed. He would try to draw support from the judgment of the Apex Court in the matter of **Santosh Hazari vs. Purushottam Tiwari (deceased) by L.Rs.**, reported in **(2001) 3 SCC 179**, so as to submit that the lower appellate Court has failed to consider the fact that the view expressed by the Trial Court was a possible view and merely for asking, at the behest of the respondent, should not have interfered with the findings.

7. In addition, learned Counsel for the appellant would urge that presently the appellant is unemployed and is not in a position to pay the maintenance as ordered.

8. So far as the judgment of the lower appellate Court, it is required to be noted that the lower appellate Court has considered the submissions made by the rival parties to the appeal in their respective proceedings. The appellate Court re-appreciated the entire evidence in the backdrop of the pleadings of the parties. The aspect as regards qualification of the appellant, his earning capacity, construction of house and his liability towards his aged parents was taken into account by the Court below. It is also required to be noted that the employment of the appellant with J.K. Paper Mills at the relevant time and his salary slip for 2009 was taken into account for the purpose of awarding maintenance.

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9. In the backdrop of above, I hardly notice any reason to cause interfere in the judgment rendered by the lower appellate Court enhancing the quantum of maintenance as the same is based on the cogent evidence. Apart from above, it also appears that the lower appellate Court has taken into account the source of income and earning capacity of the appellant. Thus, the appeal lacks merit and stands dismissed. In view of dismissal of appeal, Civil Application No.680 of 2013 does not survive and same stands disposed of .

(NITIN W. SAMBRE, J.)

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