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

**SECOND APPEAL NO.775 OF 2006
WITH
CIVIL APPLICATION NO.3620 OF 2017**

Subhash Sidramappa Shetkar,
Age : 42 years, Occu. Agril and Busi.,
R/o Phulari Galli, Udgir,
Tq. Udgir, Dist. Latur

..APPELLANT
(Orig. Defendant)

VERSUS

Kantabai w/o Subhash Shetkar,
Age : 37 years, Occu. Household,
R/o Udgir at present Ahmedpur,
Tq. Ahmedpur, Dist. Latur

..RESPONDENT
(Orig. Plaintiff)

Mr R.P. Adgaonkar, Advocate for appellant;
Mr A.M. Gaikwad, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 9th June, 2017

ORAL JUDGMENT

With the consent the appeal is taken up for final disposal at admission stage.

2. The present appellant was original defendant in Regular Civil Suit No.98 of 2002, instituted in the Court of Joint Civil Judge Junior Division, Udgir for grant of maintenance.

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3. The parties to the appeal were married on 15th June, 1986 at Ahmedpur, District Latur.

4. Out of matrimonial discord, the parties parted their way, which had prompted the respondent-wife to institute the aforesaid suit for grant of maintenance.

5. The Trial Court framed issues as regards lawful marriage and neglect on the part of the appellant-husband to maintain the respondent – wife along with other ancillary issues.

6. After declaring that there was a lawful marriage and considering the income of the appellant, the learned Trial Court awarded maintenance of Rs.800/- per month from the date of the suit vide judgment and decree dated 20th December, 2003.

7. While delivering the aforesaid judgment, the learned Trial Court had considered the evidence of plaintiff – P.W.1 at Exh.17, her brother P.W.2 at Exh.33, P.W.3 Ramkishan, a friend of P.W.2 at Exh.34, wedding card and other oral evidence. The 7/12 extract of land Gat No.20/3/1 at Exh.7 of the appellant-defendant and extract of village form no.8 in respect of municipal house No.1-3-75 at Exh.8 was also considered.

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8. The defendant examined himself at Exh.35, however, had not placed on record any documents.

9. Feeling aggrieved by the judgment and decree passed by the Trial Court, the original plaintiff preferred an appeal being Regular Civil Appeal No.19 of 2004 before the learned Ad hoc Additional District Judge, Udgir, who by his judgment and decree dated 12th April, 2005 modified the judgment and decree rendered by the Trial Court and enhanced the maintenance amount to Rs.2,000/- from the date of the suit. The lower appellate court also directed that a charge of the maintenance amount be created on the land of the present appellant being Gat No.30/3/1, ad measuring 3 Hectares and 33 R, situated at village Nideban, Taluka Udgir, District Latur. Thus, the present Second Appeal.

10. While inviting attention of this Court to the two substantial questions of law framed by this Court on 4th March, 2008 while admitting the Second Appeal, the learned Counsel appearing on behalf of the appellant would urge that in absence of findings as regards the income of the appellant, the order of payment of maintenance of Rs.2,000/- per month is not justified. So as to substantiate his contentions, the learned Counsel would take me through the judgments rendered by the Courts below, particularly the lower appellate court.

11. Per contra, Mr Gaikwad, learned Counsel appearing on behalf of the respondent-plaintiff would support the judgments and decrees rendered by

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the Courts below.

12. Perusal of the judgments and decrees of the Courts below reveals that the evidence of P.Ws.1, 2 and 3 and other documentary evidence as was produced by the respondent-plaintiff at Exhs.7 and 8 was appreciated. The oral evidence of P.Ws.1, 2 and 3 was also taken into account by the lower appellate court. The lower appellate court then observed that the present appellant-defendant is owner of 3 Hectares and 33 R land, in addition to the house property being house no.4.2.207 within the municipal area of Udgir. The lower appellate court then considered earning capacity of the present appellant and inferred that the appellant must be drawing income of about Rs.10,000/- per month and as such awarded maintenance of Rs.2,000/- per month.

13. It is not in dispute that the appellant has not paid a single pie of the maintenance to the respondent.

14. In the aforesaid background, particularly having regard to the evidence as is discussed, I hardly see any substance in the contention of the appellant that there was no material on record to infer the income of the appellant to the extent of Rs.10,000/- per month. The holding of the agricultural land and house in Udgir town had prevailed before the lower appellate court and now before this Court to form such an opinion.

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15. In view thereof, in my opinion, the substantial question of law to that effect is required to be answered against the present appellant.

16. In this view of the matter, I hardly see any substance in the present second appeal. Thus, the appeal stands dismissed with no order as to costs.

17. The respondent-plaintiff is at liberty to execute the decree. If such execution proceedings are initiated, the same be decided expeditiously.

18. As a consequence, pending Civil Application does not survive and stand disposed of accordingly.

(N.W. SAMBRE, J.)

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