

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

FAMILY COURT APPEAL NO. 7 OF 2015

1. Sau Mangala w/o Kishor Pedgaonkar,
Age 37 years, Occu. Household
R/o Kabra Nagar,
New Cotton Mill (Sutgirni),
Aurangabad
 2. Shubham s/o Kishor Pedgaonkar
Age 18 years, Occu. Education
R/o Kabra Nagar,
New Cotton Mill (Sutgirni),
Aurangabad
- .. Appellants

Versus

- . Dr. Kishor s/o Mukundrao Pedgaonkar,
Age 48 years, Occu. Medical Practitioner
R/o Dr. Bandorwal Leprosy Hospital,
Yeolewadi, Taluka Haveli, Dist. Pune
- .. Respondent

Mr D.P. Palodkar, Advocate for appellants
Mr P.M. Gaikwad, Advocate for respondent

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

DATE : 5th October 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. This is an appeal by the appellants who are wife and son of respondent against the judgment and decree dated 10.4.2014 in Petition No.C-29/2012 for maintenance under Section 18 and 20 of Hindu Adoption and maintenance Act, which came to be dismissed by learned Principal Judge, Family Court, Aurangabad.
2. The facts relevant for deciding this appeal may be stated as follows:

3. Appellant no.1 Mangala married to respondent Kishor on 19.5.1993 at Aurangabad as per Hindu Vaidic rites. Out of wedlock, she was blessed with one son Shubham on 13.6.1996. who was 16 years old at the time of institution of petition. Appellant No.1 Mangala made several allegations against her husband. The only relevant fact is that her Marriage Petition No.79/1997 was dismissed and in appeal, there was compromise by mutual consent, as per the terms of the compromise Exh.17 dated 19.10.2011.

4. The appellant contended that as per the terms of compromise, the respondent had deposited Rs.5 lakhs for Shubham's education and maintenance, but the said amount was spent much earlier. She had sustained 65% burns in 1994. She has no source of income. The respondent was serving as a doctor, drawing salary of Rs.1,30,000/- p.m. He has neglected to maintain the appellants. Appellant no.1 had demanded Rs.30,000/- per month for their maintenance. She had filed proceedings (M.A.No.1119/2012) under the Protection of Women from Domestic Violence Act. She, therefore, claimed maintenance of Rs.30,000/- per month.

5. The respondent *inter alia* stated that at the time of divorce as per mutual terms, the lump-sum maintenance of Rs.5 lakhs was granted and the said amount was deposited in the Bank by the respondent. Appellant no.1 Mangala has given up all her monetary claims including claims for her minor son Shubham whose custody was given to her. Since she had relinquished her rights of maintenance, she cannot claim maintenance for herself as well as for Shubham.

6. The learned Principal Judge, Family Court, Aurangabad accepted the plea of respondent and dismissed the petition.

7. Heard learned Advocate Mr D.P. Palodkar for the appellants and Mr P.M. Gaikwad, learned Advocate for the respondent. Mr Palodkar argued that the statutory right under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 cannot be relinquished and particularly in respect of minor son Shubham who was not party to the Hindu Marriage Petition. He argued that the respondent is serving as a doctor and earning huge salary, whereas the appellants are facing financial difficulties. Appellant no.2 was taking education in Engineering and he required lot of educational expenses. Hence, the judgment of dismissing the claim of the appellants is not sustainable and the appellants be granted maintenance as per the income of the respondent and as per the status of the parties.

8. Learned Advocate Mr P.M. Gaikwad relied on terms of compromise at Exh.17 whereby the appellant no.1 herein as a respondent in the said proceedings relinquished the shares in following terms :

“6. The respondent submits that she is hereby absolutely relinquishing all her rights of maintenance already accrued and shall not claim any future maintenance from the petitioner or his relatives in future or of the past under any law time being in force. The Respondent shall receive from the petitioner Rs.5,00,000/- (Rs. Five lakhs only) as permanent and final alimony which shall be deposited in the name of the minor child in fixed deposit in any nationalised bank till he attains

majority, the interest of which the respondent may withdraw.

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8. The petitioner submits that he has absolutely relinquished all his rights in respect of the movable and immovable properties of the respondent which are in existence today or which will be acquired in future by the respondents. Similarly the respondent also has relinquished all her rights in respect of movable and immovable properties of petitioner which are in existence today of which will be acquired by petitioner in future. That the respondent shall not claim any rights in the property of petitioner either movable and immovable through the minor son Shubham.

9. The petitioner and respondent have no monetary claim left of whatsoever nature against each other and have received all their movable and immovable valuables etc. from each other.”

9. He submitted that in view of these terms, the appellant no.1 Mangala is estopped and has lost all her rights to claim maintenance from the respondent, for herself as well as for Shubham.

10. After hearing the learned Advocates for the parties, we find that the terms of compromise will bind only the husband and wife, who were parties to the petition. The giving up right under Hindu Adoptions and Maintenance Act by the wife is legal and she will not be entitled to claim maintenance from her divorced husband, who is no more legally bound to maintain her under the above Act.

11. However, as far as son Shubham is concerned, he was not a party to Hindu Marriage Petition. Besides, he was a minor. If any

compromise was to be effected on his behalf, he should have been joined as a party and there should have been compromise as per the provisions of Order XXXII, Rule 7 of Code of Civil Procedure. The parties were bound to seek leave to effect compromise on his behalf and the Advocate for the minor was bound to file an affidavit of the next friend and certificate of himself that the said compromise was in the interest of minor. In absence of following this procedure, the said compromise effected by minor's mother will not bind the minor. The Court while accepting the compromise is bound to record its satisfaction that said compromise was for the benefit of minor. Since nothing of this sort was happened, the said compromise would not bind the minor. As per Order XXXII, Rule 14 C.P.C., the minor has a right to get the suit dismissed on the ground that it was unreasonable and improper.

12. We find that amount of Rs.5 lakhs was paid by the respondent herein for the maintenance of his son Shubham way back in 2002. The respondent is serving as a doctor and was earning salary of Rs.75,684/- in the month of November 2012. Considering the economical standard and status of the parties, we find that the permanent alimony of Rs.5 lakhs awarded to Shubham was inadequate. The statutory right of a son under the Hindu Adoptions and Maintenance Act cannot be relinquished in this way.

13. We, therefore, hold that the compromise decree Exh.17 would not bind the right of Shubham to claim maintenance under the provisions of Hindu Adoptions and Maintenance Act.

14. The next question is about the quantum of maintenance to be awarded. The salary certificate of the respondent is produced. It shows that the respondent was drawing gross salary of Rs.75,684/- in November 2012. There were some compulsory deductions including income tax of Rs.1,500/-. For the purpose of convenience, we assume his income at Rs.65,000/- per month. It is submitted at the bar that the respondent has remarried and has two children from his second marriage. Besides, his mother is dependent on him. Thus, there are six dependents including the respondent himself and his son Shubham from first wife. Considering the facts and circumstances, we feel that maintenance of Rs.10,000/- per month to Shubham will meet the ends of justice.

15. It may be stated here that Shubham was born on 13.6.1996 and during pendency of the proceedings, he attained majority on 13.6.2014. We, therefore, hold that he will be entitled to get maintenance from the date of the application i.e. 27.9.2012 to 12.6.2014.

16. In view of above findings, the appeal partly succeeds. Hence, we pass the following order :

- ORDER -

(i) The Appeal of appellant no.2 - Shubham is allowed. The appeal of the appellant no.1 is dismissed.

(ii) The judgment and decree of Family Court Petition No. 29/2012, dismissing the proceeding of petitioner No.2 – Shubham is hereby set aside.

(iii) The petition of Shubham is allowed. Respondent Dr. Kishor do pay maintenance to appellant no.2 – Shubham at the rate of Rs.10,000/- per month from 27.9.2012 to 13.06.2014. The amount is to be deposited in this Court within three months from today, failing which the amount shall carry interest at the rate of 9% p.a. A Decree shall be prepared accordingly. No order as to costs.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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