

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

SECOND APPEAL NO. 290 OF 2014

Pandhari s/o Arjun Chaudhari

Age : 60 Yrs., Occ. : Nil,

R/o : Gandhi Chowk, Varangaon

Road, Tq. Bhusawal, District : **..... APPELLANT/
[ORI. NON-APPLICANT]**
Jalgaon.

V E R S U S

Pushpabai w/o Pandhari Chaudhari

Age : 55 Yrs., Occ. : Household,

& Tailoring, R/o : C/o Gopal

Ramdas Choudhari, Jamner Road,

Gangaram Plot, Near Kailas Photo

Studio, Bhusawal, Tq. Bhusawal, **..... RESPONDENT/
[ORI. APPLICANT]**
District : Jalgaon.

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Mr. Manoj Patil (Dond) h/f Mr. C.K.Shinde,
Advocate for Appellant.

Mr. A.M.Gholap, Advocate for Respondent.

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CORAM : SUNIL P. DESHMUKH, J.

DATE OF JUDGMENT : 24th JANUARY, 2017

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ORAL JUDGMENT :

1. Heard the learned counsel for the parties.
2. The Second Appeal purports to take exception to concurrent Judgments of two courts, hitherto, where- under the request of present respondent seeking enhancement in the quantum of maintenance awarded by the court under decree dated 29/06/1992 in R.C.S. No. 366/1989 stands granted increasing the maintenance amount from ₹ 700/- to ₹ 2,000/- per month.
3. The appellate court has concurred with finding of trial court that the amount of maintenance granted in favour of the respondent by trial court is just. Two courts have considered that no evidence could be led by the appellant that wife was having any earning source. The appellant contended that she had been doing tailoring job, but he has not been able to establish the same.
4. After hearing the learned counsel, the position emerges that Miscellaneous Civil Application was being contested over enhancement of maintenance amount. The same was resisted on behalf of the present appellant,

contending that an application would not be tenable seeking alteration in the quantum of maintenance amount under the decree of civil court and separate suit would be required.

5. This contention is being raised in the Second Appeal as well by the learned counsel for the appellant relying on the Judgment of the division bench of Calcutta High court in the case of Menokabala Dasi Vs. Panchanan Sea reported in AIR 1966 Calcutta 228. It appears that the court had opined that alteration in the amount of maintenance fixed by a decree can not be ordered by an application u/s 25 of the Hindu Adoptions and Maintenance Act, 1956 unless there is provision in the decree itself granting liberty to the decree-holder to have such variation made by way of application and in the absence of such provision, the only way by which the amount of maintenance fixed by a decree can be varied is by way of a Suit.

6. While such a submission is being advanced on behalf of the appellant, it appears that there is no serious dispute between the parties that in Civil Miscellaneous Application the procedure followed had been the procedure

which is normally followed in prosecuting suits. As such, the contents in the application filed by the respondent and the Say to the same by the appellant were treated as pleadings and issues were cast. The parties were given liberty to adduce evidence. The trial court had considered the request under the Civil Miscellaneous Application as maintainable and had allowed the application enhancing the amount of maintenance.

7. The proceeding preferred by the appellant vide Regular Civil Appeal No. 216/2005 has also been conducted as Regular Civil Appeal following the procedure contemplated under Code of Civil Procedure and accordingly points were framed and the matter was dealt with on merits and it has been considered that the application being tenable.

8. Although the citation being relied on before this court had not been cited before the appellate court and the trial court, yet the appellate court considered the application to be maintainable by answering point No. 1 about maintainability of the application.

9. Further, the appellant had admitted that his

parents had expired and his mother had purchased house at Varangaon and one Dr. Anant Fegde was the tenant. It is further emerged on record that there was no dependent on the appellant. Document in respect of salary being earned by the appellant/husband has been produced on record and the appellant in-fact had conceded to that and admitted that he had been earning about ₹ 15,000/- per month by way of salary for the services being rendered in Ordnance Factory. The courts have further considered that after passage of 13 years, the over-all expenses had been increased, cost of living had gone higher. Taking over-all view, the courts have granted increase in quantum of maintenance to ₹ 2,000/- per month.

10. The learned counsel for the respondent draws attention to following observations of division bench of Bombay High court in its decision dated 17/07/2015 in Family Court Appeal Nos. 160/2014, 161/2014 and 162/2014 and First Appeal No. 1014 of 2011 in the case of Rajesh Ramkrishna Chaturvedi Vs. Sandhya and Ors., reading thus,

" In our view, it would not be proper to consider the subsequent developments

in the First Appeals while considering whether the grant of maintenance by the Family court at the relevant time was just or not. The wife has a remedy of filing an application under section 25 of the Hindu Adoptions and Maintenance Act, 1956 to claim higher maintenance for herself and the child in view of the change in circumstances. "

11. Taking over-all view of the matter, although the point is canvassed with reference to the maintainability of the Civil Miscellaneous Application, in the facts and circumstances of the case, it appears that no serious prejudice can be said to have been caused to the appellant by proceeding with the form in which the proceedings were initiated captioning them to be an application. The parties as well as the courts appear to have treated the proceedings as would be the case in a suit.

12. In the circumstances, it does not appear that any fruitful purpose would be served in entertaining the Second Appeal. It does not appear on merits the impugned orders can be faulted with. Save the same would be of academic interest.

13. Second Appeal as such stands rejected.

[SUNIL P. DESHMUKH, J.]

KNP/S.A. 290.2014 - [J]