

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**FAMILY COURT APPEAL NO.263 OF 2014
WITH
CIVIL APPLICATION NO.460 OF 2014
IN
FAMILY COURT APPEAL NO.263 OF 2014**

Mr. Ravindra Ramchandra Pol
Age: 42 years, Occupation: Business
R/o. Ram Sugandha, A/1.
Jawahar Housing Society, Kolhapur

...Appellant

vs.

Mrs. Smitarani Ravindra Pol
Age:32 years, Occupation: Service
R/o. Plot No.8, Saidarshan Colony,
Saidapur, District: Satara

...Respondent

Mr.Prashant Bhavake for the Appellant.

Mr.Shankar Maruti Katkar a/w Ms. Manisha Devkar for the
Respondent.

**CORAM : A.S.OKA AND
ANUJA PRABHUDESSAI,JJ.
DATE : 7th FEBRUARY 2017.**

ORAL JUDGMENT (Per A. S. Oka, J)

. The parties were put to notice on 10th June 2016 that the Appeal will be taken up for final disposal at the admission stage.

2. The Appellant is the husband and the Respondent is the wife. The marriage between the Appellant and the Respondent was solemnized on 7th May 2009. A Petition was filed by the Appellant/husband before the Family Court for seeking a declaration that the marriage was void by invoking clause (b) of sub-section (1) of Section 12 of the Hindu Marriage Act, 1955 (for short “ the said Act”). He also claimed a declaration that the marriage was void in view of

clause (a) of sub-section 1 of Section 12. Pending the said Petition, the Respondent wife made an Application under section 25 of the said Act for seeking permanent alimony at the rate of Rs.10,000/- per month.

3. By the impugned judgment and decree, the prayer for declaration under clause (b) of sub-section (1) of Section 12 of the said Act made by the Appellant was rejected. However, the learned Judge of the Family Court at Kolhapur proceeded to anul the marriage in terms of clause (a) of sub-section (1) of section 12 of the said Act. In short, a finding was recorded that the marriage was void. While disposing of the Petition as aforesaid, the learned Judge exercised powers under sub-section (1) of section 25 of the said Act and directed the Appellant to pay permanent alimony of Rs.3000/- per month to the Respondent from the date of the decree till her lifetime or till her remarriage.

4. The challenge in this appeal is confined only to that part of the decree which directs the payment of permanent alimony at the rate of Rs.3,000/- per month. The first submission of the learned counsel appearing for the Appellant is that when the learned Judge had declared the marriage between the Appellant and Respondent to be void, sub-section (1) of Section 25 cannot be invoked. The second submission is that there is absolutely no evidence adduced by the Respondent wife to prove the income of the husband. He urged that there is no basis for granting permanent alimony at the rate of Rs.3,000/- per month.

5. The learned counsel for the Respondent supported the impugned decree. He submitted that after passing of the impugned decree, there is a major change in circumstances as the salary of the

Appellant has been considerably increased.

6. We have given careful consideration to the submissions. Before dealing with the objection regarding the grant of prayer under sub-section (1) of Section 25 of the said Act, it will be necessary to advert to the evidence adduced by the parties on the aspect of income. The Appellant filed his affidavit in lieu of the examination-in-chief. In the said affidavit, the occupation of the Appellant is shown as business. He claimed that the Respondent was employed in Satara District Co-operative Bank and was drawing salary of Rs.15,000/-. However, he did not disclose his own income. In the cross- examination, he stated that after obtaining B.com degree, he was doing a job and from the year 2005, he is working as a Tax Consultant. We may note here that the Petition was filed in the year 2013 and the evidence and cross-examination was recorded in the year 2014. In paragraph 20 of the cross examination, the husband accepted that his office as a Tax Consultant is at Rajarampuri in Kolhapur. He admitted that in the year 2011, in Diwali he started business of Ladies garments in partnership with one Swarupa Bhosale. He stated that the husband of the said Swarupa Bhosale was his friend.

7. The Respondent wife filed her affidavit in lieu of examination-in-chief. Apart from stating that her husband was carrying on business, she stated that the Appellant was working as a Tax Consultant and his financial condition was sound. In the cross examination of the wife, it is brought on record by the husband that he is holding M.com. Degree. The wife denied that the partnership business was closed in the year 2011.

8. In the application made by the Respondent at Exh.15 for

invoking section 25 of the said Act, she claimed that as a Tax Consultant, the income of the Appellant was Rs.30,000/- to Rs.40,000/- per month and that from the business, he was getting income of Rs.15,000/- per month.

9. Now, we may advert to the findings recorded by the learned Judge of the Family Court. In paragraph 30, the learned Judge noted that though the Appellant accepted that he was doing business as a Tax Consultant, he has not placed the details of his income on record. On the other hand, the Respondent-wife accepted that she was in the employment and was drawing salary of Rs.10,000/- per month. Considering the evidence on record which establishes that the Appellant was having his office as a Tax Consultant in Rajarampuri, Kolhapur and considering the admitted position that he was running a business in partnership, the learned Judge of the Family Court has fixed permanent alimony at the rate of Rs.3,000/- per month. The learned Judge has followed the well settled principle that the wife is entitled to enjoy the same lifestyle as the lifestyle of her husband. Most importantly, the Appellant did not disclose his own income before the Family Court. He did not disclose income which he was earning as a Tax Consultant and the income which he was receiving by way of profit from the partnership business.

10. Hence, in our view, no fault can be found with the decree of the Family Court granting permanent alimony at the rate of Rs.3,000/- per month.

11. Now, we deal with the legal submissions made by the learned counsel appearing for the Appellant. Section 25 of the said Act

reads thus:

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

12. Section 25 clearly provides that the power to grant permanent alimony can be exercised by the Matrimonial Court at the time of passing any decree or at any time subsequent thereto. In the case of **Smt. Chand Dhawan vs. Jawaharlal Dhawan**¹, the issue before the Apex was whether after dismissal of a petition under the said Act, a relief can be sought under sub-section(1) of Section 25 of the said Act. The Apex Court held that unless the Matrimonial Court passes a decree as contemplated by the said Act, the power under section 25 cannot be exercised. It will be necessary to make a reference to paragraph 23 of the decision of the Apex Court in the case of Smt.

1 (1993) 2 SCC 40

Chand Dhawan which reads thus:

23. The preamble to the Hindu Marriage Act suggests that it is an Act to amend and codify the law relating to marriage among Hindus. Though it speaks only of the law relating to marriage, yet the Act itself lays down rules relating to the solemnization and requirements of a valid Hindu marriage as well as Restitution of Conjugal Rights, Judicial Separation. Nullity of Marriage, Divorce, legitimacy of children and other allied matters. Where the statute expressly codifies the law, the courts as a general rule, is not at liberty to go outside the law so created, just on the basis that before its enactment another law prevailed. Now the other law in the context which prevailed prior to that was the uncodified Hindu Law on the subject. Prior to the year 1955 or 1956 maintenance could be claimed by a Hindu wife through Court intervention and with the aid of the case law developed. Now with effect from December 21, 1956, the Hindu Adoptions of Maintenance Act is in force and that too in a codified form. Its preamble too suggests that it is an Act to amend codify the law relating to adoptions and maintenance among Hindus. Section 18(1) of the Hindu Adoptions and maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her life-time. Sub-section (2) of Section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviour enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or

against her. On or at the time of the happening of that event, the court being siezed of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the Court retains the jurisdiction at subsequent stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The Court further retains the power to change or alter the order in view of the changes circumstances". Thus the whole exercise is within the gamut of a diseased or a broker marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial Court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus. " (Underline added)

13. In view of the law laid down by the Apex Court, the submission of the learned counsel appearing for the Appellant about the power of the Court under section 25 of the Act deserves to be rejected. In the case of ***Shataram Tukaram Patil and Anr. vs. Dagubai Tukaram Patil & Ors.***², a Division Bench of this Court clearly held that section 25 of the said Act confers upon a woman whose marriage is void or declared to be void, a right of maintenance under section 25 of the said Act as against her husband.

14. Therefore, we hold that even in a case where the

2 AIR 1987 Bom 182

Matrimonial Court passes a decree declaring the marriage as void by exercising the power under section 12 of the said Act, the wife can always claim a relief under section 25 of the said Act.

15. As regards the argument based on the subsequent events, under sub-section 2 of section 25 of the said Act, the Appellant can always apply to the Court which has passed the impugned decree for alteration or modification of the decree of permanent alimony provided there is a change in circumstance as contemplated by sub-section 2 of section 25 of the said Act.

16. Subject to what is observed above, there is no merit in the Appeal. The Appellant will have to pay costs of the Appeal quantified at Rs.10,000/- to the Respondent. Accordingly, we pass the following order:

- (i) Appeal is dismissed;
- (ii) The Appellant to pay costs of the appeal quantified at Rs.10,000/- to the Respondent within a period of two months from today;
- (iii) In view of disposal of the Appeal, the pending Civil Application does not survive and the same is accordingly disposed of.

(ANUJA PRABHUDESSAI,J)

(A.S.OKA,J.)