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

FAMILY COURT APPEAL NO.11 OF 2018

Macchindra s/o Rangnath Jadhav,
Age: 47 years, Occu: Police Constable,
B.No.343, Police Head Quarter,
Police Mukhyalaya, Mill Corner,
Aurangabad
Police Station : Begumpura

..APPELLANT

VERSUS

1. Kojagiri Machindra Jadhav,
Age: 33 years, Occu: Housewife,
R/o. L-1, 12/3, New CIDCO,
Ramnagar, Mukundwadi, Aurangabad

2. Priyanka Machindra Jadhav,
Age: 14 years,
Applicant No.1 Mother, as
Minor guardian

3. Aishwarya Machindra Jadhav,
Age: 12
Applicant No.1 Mother, as
Minor guardian

..RESPONDENTS

Mr M. M. Parghane, Advocate for appellant;
Mr G. R. Gotiwale, Advocate holding for Mrs A. A. Gadekar, Advocate for
respondents

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 12th June, 2018

ORAL ORDER:

Heard learned Counsel appearing for the appellant as well as learned
Counsel for the respondents.

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2. By the present appeal, the appellant is challenging the order dated 30th November 2017, whereby an application seeking enhancement in maintenance is partly allowed by the learned Principal Judge of the Family Court, Aurangabad (hereinafter referred to as 'learned lower Court' for the sake of brevity).

3. With the assistance of learned Counsel appearing for the respective parties, we have gone through the record as well as record and proceedings called for by this Court. It may not be out of place to refer certain orders passed by this Court. This Court, by way of interim directions, on the backdrop of the submission of the learned Counsel appearing for the appellant directed the appellant to deposit an amount of Rs.20,000/- in this Court to show his bona fide.

4. On 17th April, 2018, learned Counsel appearing for the respondents placed on record copy of receipt issued by Gurukul Classes. Now coming to the other factual aspect of the appeal, it reveals from perusal of the material that the respondent No.1, on her own behalf and on behalf of her minor children, namely, Priyanka and Aishwarya submitted petition bearing No.2 of 2017 before the learned lower Court, seeking enhancement in maintenance under Section 25 of the Hindu Adoption and Maintenance Act. It was submitted before the learned lower Court that earlier to the said

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petition, the respondent No.1 had filed application for enhancement in maintenance, namely, Civil Miscellaneous Application No.36 of 2014. In view of the settlement between parties, the proceedings was disposed of by directing the appellant herein to pay maintenance of Rs.8,000/- p.m. in total, i.e. Rs.3,000/- p.m. for respondent No.1 – Kojagiri, Rs.2,700/- p.m. for respondent No.2 – Priyanka and Rs.2,300/- p.m. for respondent No.3 – Aishwarya. Respondent Nos.2 and 3 are of 14 years and 12 years, respectively and are prosecuting their studies in standard 9th and standard 7th respectively.

5. It was submitted in the application before the learned lower Court that applicant No.1 – Kojagiri is residing at Aurangabad along with her daughters. The house rent of applicant is @ Rs.5,000/- p.m. The appellant herein (the respondent before the learned lower Court) is working as a Constable in Police Department and receiving salary to the tune of Rs.45,000/- to 50,000/- per month approximately. It was also submitted before the learned lower Court that apart from the salary, he is also getting some additional income by way of house rent. It is further submitted that there is substantial increase in the rates of rent. There is also substantial increase in the rates of basic and essential commodities. There is also increase in educational expenses in the form of academic fees, tuition fees, etc. As such, it was prayed before the learned lower Court to enhance the maintenance amount.

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6. The application was contested by countering the submissions. It was submitted by the appellant herein before the learned lower Court that he is receiving salary of Rs.18,000/- only and after deductions the amount received by the him, is hardly Rs.10,000/-. It was then submitted that the appellant has to incur expenses towards house rent, petrol, washing and ironing, etc. It was also submitted that the appellant had to raise hand loan so as to meet the expenses and the claim of the applicants (respondents herein) is an exorbitant claim.

7. Learned lower Court directed both the parties to place on record the list of expenses. It may not be out of place to state that an attempt was made to refer the parties for exploring the possibility for settlement through mediation by the lower Court but it failed. The respondents herein placed on record certain receipts towards the expenses. These receipts are of a private course i.e. English speaking course and the amount paid for this course is Rs.1,500/-. Then there is a chit showing some fees paid @ Rs.445/-. Then there is a receipt issued by one academic, namely, SIP Abacus and the fees paid to this course is Rs.1,200/-. This seems to be an extra coaching class. Then there is prescription issued by a private hospital, namely, Sai Clinic referring to certain tablets. The appellant also placed on record certain documents to show that he was hospitalized and then there is a prescription issued by a private physician, namely, Dr. Vijay Sarode and

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then there are certain medical bills. Then there are rent receipts and the rent agreement as well as certain petrol bills. Then there is copy of salary certificate placed on record to show that total emoluments received by the appellant are to the tune of Rs.37,888/-, whereas the net payment is shown as Rs.18,687/-. So this was the material placed on record before the learned lower Court to show the expenses.

8. The respondent No.1 tendered her evidence on affidavit as well as the appellant. On these counter claims, the learned lower Court arrived at conclusion that there is substantial increase in the essential commodities. Learned lower Court was then pleased to observe that the appellant admitted that there is other depending members on the appellant than the applicants. Learned lower Court also then referred to the documents submitted on behalf of the appellant, namely, the salary certificate and loan documents to show that the loan was obtained for construction of house and the medical bills, etc. Learned lower Court then referred to the material placed on record by the applicants, namely, the receipts of the classes. Learned lower Court arrived at conclusion that for the educational expenses, applicant No.1 has to incur expenses @ Rs.6,584/- p.m. for applicant No.2.

9. Learned lower court was then pleased to observe that the applicant No.1 was successful in establishing that she has paid fees of Rs.65,000/- towards foundation course and considering these aspects, the application

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was allowed partly. In the operative order, learned lower court directed the appellant to pay enhanced maintenance to the applicants, i.e. the appellant herein was directed to pay maintenance @ Rs.4,300/- p.m. to applicant No.3 from the date of the order i.e. from 30th November, 2017.

10. Learned Counsel appearing on behalf of the appellant vehemently submitted that by way of the operative order, the appellant was directed to pay an amount of Rs.65,000/- to applicant No.2 towards foundation course fees and to deposit the said amount in the Court within a stipulated period of five months from the date of the said order. Learned Counsel for the appellant submitted that there was absolutely no material before the learned lower Court to show that the amount of Rs.65,000/- was paid as a course fees by the applicant No.2 herself or through applicant No.1. Learned Counsel for the appellant submitted that the list of documents submitted before the Court consisted of only certain receipts towards the speaking course and other extra course, namely, SIP Abacus.

11. Learned Counsel for the appellant then submitted that the receipt placed on record before the learned lower Court only shows an amount of Rs.65,000/- and it does not bear the name of the institute. Learned Counsel for the appellant then submitted that the receipt is placed only before this Court to show that an amount of Rs.5,000/- is paid towards the course being run by a private institute, namely, Gurukul Classes. Then it was submitted

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by the learned Counsel for the appellant that without there being any positive material to establish that an amount of Rs.65,000/- was paid by the applicants towards the foundation course fees and without giving any opportunity to the appellant to counter the submissions of behalf of the applicant on the issue of Rs.65,000/- as course fees, the order is passed by the learned lower Court and the same is unsustainable. He submitted that the appellant is before this Court only raising a challenge to these directions. Insofar as the other part of the order, i.e. enhancement in maintenance amount towards applicant No.3 is concerned, the appellant is ready to pay enhanced amount of maintenance to applicant No.3 as per the order of learned lower Court.

12. Learned Counsel appearing for the respondent supported the order passed by the learned lower Court.

13. On going through the material placed on record as well as the record of the learned lower Court, we find considerable merit in the submission of learned Counsel appearing for the appellant. At the cost of repetition, we state that insofar as course fees is concerned, only one receipt was placed on record and that receipt was not bearing the name of the institute. The said receipt placed on record is issued by Gurukul Classes. Perusal of the order sheet shows that the receipt was placed before this court on 17th April, 2018. Learned Counsel for the respondents admits that no such receipt was placed

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on record before the learned lower Court. Perusal of the receipt shows that amount of Rs.5,000/- was paid on 6th January, 2017 by respondent No.2 herein i.e. Priyanka Machindra Jadhav. There is considerable merit in the submission of learned Counsel appearing for the appellant. The learned lower Court ought to have granted opportunity to the appellant to counter the submission by way of oral evidence or by way of certain documents on the aspect of the amount of Rs.65,000/- towards the course fees. Learned Counsel for the appellant was justified in submitting that the learned lower Court, without offering such opportunity to the contesting party, accepted the claim of the respondents herein and passed the order thereby directing the appellant to pay an amount of Rs.65,000/- towards fees of foundation course within stipulated period of five months.

14. As the learned Counsel for the appellant submitted that he is not challenging the other part of the order and his only grievance is in respect of order directing the appellant to pay an amount of Rs.65,000/- towards course fees and as we find considerable merit in the submission of learned Counsel for the appellant on perusal of the material and as we are of the opinion that learned lower Court ought to have granted an opportunity to the appellant and the order is passed without offering an opportunity to the appellant, we allow the appeal partly.

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15. The order dated 30th November, 2017, passed by the learned lower Court i.e. learned Principal Judge of the Family Court, Aurangabad is maintained to the effect that the appellant to pay an amount of maintenance to respondent Nos.1 and 2 in toto i.e. @ Rs.3,000/- pm. to applicant No.1 and @ Rs. 2,700/- p.m. to applicant No.2 and @ Rs.4,300/- per month.

The order passed by the learned lower Court directing the appellant to pay an amount of Rs.65,000/- within stipulated period of five months from the date of the said order, is quashed.

We remit the matter back to the learned lower Court to pass order afresh on the issue of the claim towards the foundation course fees as claimed by applicant No.2 in the application.

Learned lower Court to pass order afresh by giving equal opportunity to the parties to lead evidence and counter the same. Learned Judge of the Family Court, Aurangabad to pass afresh orders on this issue as early as possible and preferably within a period of eight weeks from the date of the order of this Court.

16. The appellant has deposited the amount of Rs.20,000/- in this court to show his bona fides. The receipt is placed on record that the amount of Rs.5,000/- is paid in the month of January i.e. on 6th January, 2017 by

respondent No.2, as such, we permit respondent No.2 to withdraw the amount of Rs.5,000/- out of amount of Rs.20,000/- deposited by the appellant in this court. Rest of the amount i.e. amount of Rs.15,000/- is permitted to be withdrawn by the appellant.

In view of the fact that we have allowed the appeal partly, no orders are required to be passed on civil application seeking interim order in the nature of order of stay in the appeal. As such, civil application is disposed of.

(S. M. GAVHANE, J.)

(PRASANNA B.

VARALE, J.)

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