

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

FAMILY COURT APPEAL NO.6 OF 2017

Vijay s/o. Kishan Mahagavali,
Age: 35 years, Occupation : Beggar,
Residing at Tang-Bond, Hyderabad

APPELLANT

VERSUS

Renuka w/o. Vijay Mahagavali,
Age: 31 Years, Occupation : Self Employed,
Residing at C/o. Kacheswar Kisan Bhagat,
Dhirendra Apartment, Samarth Nagar,
Aurangabad.

RESPONDENT

...

Mr.Kshitij Surve, Advocate for the appellant
Mr.M.G.Kochar, Advocate for the respondent.

...

WITH

FAMILY COURT APPEAL NO. 33 OF 2017

Renuka w/o. Vijay Mahagavali,
Age: 31 years, Occ. Nil,
R/o. C/o. Kacheswar Kisan Bhagat,
Dhirendra Apartment, Samarth Nagar,
Aurangabad.

APPELLANT

VERSUS

Vijay Kishan Mahagavli,
Age: Major, Occ: Service,
R/o. House no.5-1-308,
Near Balaji Temple, Shikh Galli,
Gavliguda Parisar, Hyderabad (A.P.)

RESPONDENT

...

Mr.M.G.Kochar, Advocate for the appellant
Mr.Kshitij Surve, Advocate for the respondent

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 12.03.2018
Pronounced on : 15.03.2018

ORDER: (Per S.S.Shinde, J.):

1] Both these Family Court Appeals are arising out of the common judgment and order, and therefore, the same are heard together and being disposed of by the common order.

2] The appellant in Family Court Appeal No.33 of 2017 is the original petitioner in Petition No. A-171/2015 [Renuka w/o. Vijay Mahagavali Vs. Vijay s/o. Kisan Mahagavali], decided by the Judge, Family Court, Aurangabad on 29th August, 2016. By the impugned judgment and order dated 29.08.2016, the Family Court partly allowed the Petition filed by the appellant, namely, Renuka i.e. the wife, and it is ordered thus:

(2) *The marriage between petitioner and respondent solemnized on 24.04.2003 at Hyderabad is hereby dissolved by decree of divorce as per Section 13 (1) (i-a) of Hindu Marriage Act, 1955.*

(3) *Application at Exh. 11 is partly allowed. Thereby, the respondent is directed to pay maintenance of Rs.3,000/- p.m. to the petitioner from the date order. However, the prayer for stridhan is rejected. The amount of maintenance granted is not in addition to the interim maintenance granted under Domestic Violence Act.*

3] Family Court Appeal No.06 of 2017 is filed by the respondent, namely, Vijay Kisan Mahagavali i.e. husband, before the Family Court.

4] The appellant-wife, in Family Court Appeal No.33 of 2017, has prayed for modification of the judgment and decree to

the extent of quantum of maintenance, thereby praying for maintenance of Rs.10,000/- per month from the date of neglecting to maintain and cohabit with the appellant by respondent-husband, and further prayer is made seeking direction against the respondent to pay arrears towards maintenance. There is also prayer for return of gold ornaments etc. given at the time of marriage to the respondent-husband.

5] Learned counsel appearing for the appellant-Renuka, in Family Court Appeal No.33 of 2017 submits that the respondent [husband] did not enter into the witness box. Therefore, the claim of the appellant for permanent alimony and other prayers for return of gold ornaments and also two wheeler ought to have been granted in toto. However, the Family Court has granted only Rs.3000/- per month towards permanent maintenance/permanent alimony. The said amount by any

standard is meager. Therefore, the learned counsel appearing for the appellant-Renuka, relying upon the grounds taken in the Appeal Memo submits that the Family Court Appeal deserves to be allowed.

6] Learned counsel appearing for the respondent-Vijay vehemently opposed the reliefs claimed in the Appeal and submits that the appellant did not prove by bringing on record documentary evidence or any other evidence about source of income of the respondent. It is submitted that the appellant-Renuka has not brought on record sufficient and cogent evidence to show that, as a matter of fact respondent was given as *stridhan*, gold ornaments or any other article at the time of marriage.

7] Advocate Mr. Kshitij Surve appearing for the appellant-Vijay in Family Court Appeal No.6 of 2017 restricts his prayer to

the extent of quashing the findings recorded by the Family Court, while answering issue no.2 i.e. whether the petitioner is entitled to permanent alimony and maintenance as per Section 25 of Hindu Marriage Act, 1955. He submits that upon careful perusal of the findings / reasons assigned by the Family Court while directing to pay Rs.3,000/- per month to the petitioner, there is no discussion of any documentary evidence or authentic source of income brought on record by the respondent-Renuka. It is submitted that the Family Court has rightly rejected the prayer for *stridhan* made by the respondent-wife. The learned counsel invites our attention to the grounds taken in the Appeal memo and findings recorded by the Family Court and submits that clause (3) in the operative part of the order dated 29.08.2016 deserves to be quashed and set aside.

8] Learned counsel further submits that after pronouncement of the judgment and order by the Family Court, respondent-wife has performed second marriage. He invites our attention to the photograph, and amended portion in the Appeal Memo and submits that for the said reason also, clause (3) in the operative part of the order dated 29.08.2016 deserves to be quashed and set aside. In support of his aforesaid contentions he placed reliance on the ratio laid down in the following judgments; *in the case of U.Sree Vs. U.Srinivas*¹, *in the case of Ritula Singh Vs. Lt.Col.Rajeshwar Singh*², *in the case of Smt. P.Archana @ Atchamamba Vs. Varada Siva Rama Krishna*³ and *in the case of Jayashree Vinod Bilthare and Anr. Vs. Vinod Bhagwandas Bilthare and Anr.*⁴.

1 2013 [1] All MR 409

2 2010 [3] All MR 828

3 2008 All MR [Cri.] Journal 240

4 2003 [12] LJ Soft 91

9] We have considered the submissions of the learned counsel appearing for the parties. Upon careful perusal of the order dated 29.08.2016 passed by the Family Court, it appears that respondent therein i.e. Vijay Kisan Mahagavali, is directed to pay maintenance of Rs.3,000/- p.m. to the petitioner-wife from the date of order. However, the Family Court has clarified that the amount of maintenance granted is not in addition to the interim maintenance granted under Domestic Violence Act.

10] Upon careful perusal of the discussion in para 10 of the impugned order dated 29.08.2016, the Family Court has observed that the respondent i.e. husband, has stated that he works as a coolie and earns Rs.100/- to 150/- per day. It is further observed by the Family Court that the respondent is staying in a city like

Hyderabad. Considering the minimum wages of labour also, it cannot be believed that the respondent is getting only Rs.100/- to 150/- per day. In a city like Hyderabad, even a labourer can earn atleast Rs.8,000/- to 10,000/- p.m. As has been mentioned above, the respondent has not stepped into witness box. Therefore, the contention of the respondent that he earns only Rs.100/- to 150/- per day cannot be believed. The petitioner-wife has stated that she has no source of income.

11] In Family Court Appeal filed before this Court, Renuka has placed on record copies of documents, suggesting that, respondent-husband is the owner of certain vehicles i.e. four wheeler. Be that as it may, viewed from any angle in our considered opinion, the directions given by the Family Court to pay Rs.3,000/- per month to the petitioner, namely Renuka i.e. wife, cannot

be said to be unreasonable, *perverse*, and therefore, no interference is called for.

12] So far as the prayer of the wife namely Renuka to pay maintenance of Rs.10,000/- per month is concerned, she could not bring cogent and satisfactory evidence on record to hold that, she is entitled for Rs.10,000/- per month towards maintenance / permanent alimony. It further appears that though it was claimed that the husband, namely, Vijay was given as *stridhan* gold ornaments and other article at the time of marriage, however, no evidence was placed on record before the Family Court to that effect.

13] So far as the arrears towards maintenance is concerned, it is needless to observe that the husband-Vijay is under obligation to pay the said amount and on non-

payment of such amount, wife-Renuka can take appropriate steps in accordance with law.

14] The contention of the learned counsel appearing for the husband-Vijay that, after the judgment and decree of the Family Court wife-Renuka has performed second marriage, will have to be proved by him before the competent Court of jurisdiction, and this Court only on the basis of the photographs cannot accept the contention of the learned counsel appearing for the husband-Vijay that, Renuka-wife has performed second marriage. It is also relevant to mention that the amount of Rs.3,000/- per month towards maintenance granted by the Family Court is not in addition to the interim maintenance granted under Domestic Violence Act. Meaning thereby Renuka-wife is already receiving the maintenance i.e. Rs.3,000/- in the proceedings arising out of the Domestic Violence.

15] In the light of discussion herein above, we are unable to persuade ourselves to grant any relief in favour of appellants. Both the Appeals are devoid of merits. Hence, both the Family Court Appeals stand dismissed.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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