

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

**FAMILY COURT APPEAL NO. 29 OF 2017
WITH
CIVIL APPLICATION NO.10915 OF 2017
AND
CIVIL APPLICATION NO. 3919 OF 2018**

Deepak s/o. Anantrao Dahiwal .. Appellant
Age. 36 years, Occ. Service,
R/o. Ranubai Mandir, Hanuman Mandir Road,
Shahunagar, Beed, Tq. & Dist. Beed.

Versus

Kalpana w/o. Deepak Dahiwal .. Respondent
Age. 34 years, Occ. Service,
R/o. Savit Apartment, Geeta Nagar,
Nanded, Tq. & Dist. Nanded.

Mr.V.P. Savant, Advocate for the appellant.
Mr.G.D. Kale, Advocate for sole respondent.

**CORAM : S.S.SHINDE &
S.M.GAVHANE,JJ.
RESERVED ON : 04.04.2018
PRONOUNCED ON : 17.04.2018**

JUDGMENT : [PER : S.M. GAVHANE,J.] :-

1. The appellant-husband (hereinafter referred to as the "respondent"), who is directed to pay monthly maintenance of Rs.8000/- as per judgment and order dated 15.07.2017 passed by the Judge, Family Court, Nanded in Petition No.C-5 of 2015 from the date of filing of said petition i.e.05.10.2015 to the respondent-wife (hereinafter referred to as the "applicant"), who had filed said application under section 18 of the Hindu Adoption and Maintenance Act, claiming maintenance, has preferred this appeal challenging the said judgment and order.

2. The facts giving rise to this appeal in short are thus :-

A) The marriage of the applicant was solemnized with respondent on 05.06.2005 at Nanded as per the customs and rituals prevailing in their community. Applicant cohabited at the house of respondent after

marriage. She was treated properly just for one month. Thereafter, respondent, his parents and other relatives started taunting and harassing her for the reason that she is handicapped and unable to perform domestic chores properly. They also illtreated her for the reason that less dowry was paid in the marriage. Respondent alleged that she is unable to give full satisfaction to him in sexual intercourse. All these acts of respondent and his family members caused mental pain and physical torture to her. She tolerated all these atrocities on the hope of good future. The mother of respondent is a Government kerosene dealer and also politically influential person. She started demanding Rs. 2 lakhs to applicant for expansion of the medical shop. Applicant informed this demand to her parents. On 06.07.2005 her father and brother came to her matrimonial house and tried to persuade the respondent and his family members, they also expressed their inability to fulfill the said monetary demand. Respondent, under the thumb of his mother, refused to accede to their requests and refused to keep

the applicant in his house. Consequently, she was compelled to come back to her parental house with her father and brother on 07.07.2005. On this day, respondent and his parents came along with them. They forced the applicant and her father to travel via Parbhani. They stopped at Parbhani and compelled applicant to purchase bond papers of Rs.100/-. Her signatures were obtained on blank papers under the garb of writing an undertaking of good behaviour. Thereafter, applicant was compelled to go to her parental house.

B) The applicant further asserts that subsequent to the above incident respondent issued false notice to her calling upon her to resume cohabitation. On receipt of notice, she made a telephonic call to respondent and expressed her readiness to join his company. He refused saying that he shall not allow her in his house until the demand of Rs.2,00,000/- is fulfilled. Owing to weak financial condition her father could not fulfill the said demands. Therefore, she lodged report under section 498-

A of IPC to Itwara Police Station, Nanded, which was transferred to a Police Station at Beed. She filed Civil Suit No.317/2006 in the Court of Civil Judge, Junior Division, Nanded for maintenance under section 18 of the Hindu Adoption & Maintenance Act. Thereafter respondent filed HMP No.68/2007 for nullity of the marriage in the Court of Civil Judge, Senior Division, Nanded. In the same Court applicant filed HMP No.42/2006 for restitution of conjugal rights. Both the petitions were clubbed and decided together. HMP No.68/2007 was dismissed while HMP No.42/2006 was decreed. Despite the decree of restitution of conjugal rights, respondent did not allow the applicant to resume cohabitation. Hence, she filed execution petition No.93/2008 for execution of the said decree. Meantime a compromise took place between the spouses. Applicant withdrew the execution petition and deposed in favour of respondent in the prosecution under section 498-A of IPC.

C) Consequent to the compromise applicant joined

the company of respondent. During this cohabitation she conceived. On 02.08.2009 respondent drove her out of the house while she was carrying gestation of seven months. On 02.10.2009 she gave birth to a son named, Abhinav. Respondent has not provided any maintenance to applicant and her son since separation. He has completely neglected them. Applicant is unemployed and without any source of income. Respondent is qualified up to B. Pharmacy and is serving as a Pharmacist (Aushadnirmata) in the primary Health Center at Shirasmarg, Tq. Georai, Dist. Beed and is drawing salary of Rs.35,000/- per month. He has sufficient means to provide maintenance to applicant. Hence, petition claiming maintenance was filed.

D) Respondent filed his written statement at Exh.14 and admitted his relationship with applicant. However, he denied all the adverse allegations contending that petition is not tenable. The applicant had filed RCS No.317/2006 for the same relief and she has withdrawn it

unconditionally. Now she cannot file this petition on same facts. Applicant has also withdrawn all the cases pending in various courts admitting that she is residing happily with respondent. As such, there is no cause of action to file this petition. Respondent also is a handicap. Applicant disliked him since beginning for this reason. She has completed her B.A.M.S. and is serving at ShishuGruha at Koutha, Nanded, as well as in the hospital of Dr. Sunita Gutte. She is earning huge amount and is able to maintain herself. She does not require any maintenance. She is very arrogant. She always threatened the respondent during cohabitation that she shall destroy his life. For this reason she filed false prosecution under section 498-A of IPC against respondent and his family. The Chief Judicial Magistrate, Beed has acquitted him and his family members from the said prosecution. Respondent is suffering from kidney problem and various ailments. He requires huge medical expenses per month. After marriage he joined the service at Primary Health Centre. But his income is

meager to satisfy his own needs. Applicant has levelled false allegations against him. If he was not sexually satisfied, applicant would not have conceived pregnancy. This denotes the falsity in the allegations of applicant. In order to obey the orders of the court of justice, he took the applicant for cohabitation. But the behaviour of applicant did not change. She is not interested in cohabiting with him. She has illicit relations with her brother-in-law named Arjun Kulthe. Therefore, she is not interested in respondent. Applicant, her father and brother compelled him to travel to Parbhani. They were interested in dissolution of marriage. They purchased bond papers and scribed a deed of divorce on them. The marital tie has been dissolved this way by applicant and her family members. Even subsequent to the compromise, applicant did not behave properly. She voluntarily left his house. She is demanding Rs. Ten lakhs and half the salary of respondent towards one time settlement and dissolution of marriage. On his refusal, he has been involved in various cases in different courts. He gets

salary of Rs. 22,000/- per month. He is unable to provide separate maintenance to applicant. Hence he claimed to dismiss the petition.

3. The learned judge framed in all following four issues.

Sr. No.	Issues
1.	Does petitioner prove that she has sufficient cause to reside separate from respondent without forfeiting her right to maintenance?
2.	Does petitioner prove that having sufficient means respondent had refused or neglected to maintain her?
3.	Does respondent prove that petitioner has sufficient source and income to maintain herself?
4.	Is petitioner entitled to maintenance as sought?

4. In evidence the applicant has filed her affidavit at Exh.17 and produced copy of judgment at Exh. 19 in Hindu Marriage Petition Nos.68 of 2007 and 42 of 2006, between her and her husband i.e. respondent, respectively filed by husband/respondent for dissolution

of marriage and filed by her for restitution of conjugal rights. Respondent has filed his affidavit in evidence at Exh.45 and examined witness Ramrao Tompe and Hari Sontakke respectively at Exhs.54 and 67.

5. On considering the evidence adduced by the parties, the learned Judge of the Family Court held that the applicant has proved that she has sufficient cause to reside separate from respondent without forfeiting her right to maintenance; that the applicant has proved that having sufficient means respondent had refused or neglected to maintain her; that the respondent has failed to prove that the applicant has sufficient source of income to maintain herself and on answering above issue Nos.1, 2 and 4 in the affirmative directed the respondent to pay monthly maintenance of Rs.8000/- from the date of said petition by the impugned judgment and order.

6. Aggrieved by the above said judgment and order respondent/appellant has filed this appeal on several

grounds mentioned in the memorandum of appeal.

7. We have heard the learned advocates appearing for the respondent/husband and the applicant/wife. With their assistance, we have perused the evidence adduced by the parties before the Judge, Family Court, Nanded. So also we have perused the impugned judgment.

8. There is no dispute regarding relationship of the applicant and the respondent as wife and husband and that they have married on 05.06.2005. So also there is no dispute that from the wedlock with the respondent applicant/wife has begotten a son and is residing with the applicant.

9. According to the applicant she has sufficient cause to reside separate from respondent and that having sufficient source of income respondent had refused to maintain her. In this respect in her evidence at Exh.17 applicant has stated in accordance with her contentions

in the petition that after marriage she was treated well hardly for one month and during the said period, parents, brother and other relatives of respondent started taunting and harassing her by uttering words that she is handicapped and that she does not perform the household work properly and that her parents have not given more dowry. She stated that they tried to beat her and when she told this fact to the respondent he also supported his parents. She also stated that respondent alleged that she is not able to give full satisfaction of sexual intercourse and it has caused mental and physical torture to her. She stated that she suffered all this with a view that there would be change in the behaviour of the respondent but in vain. Moreover in paragraph Nos.3 and 4 she has stated about demands of amount made by the respondent on the say of his mother from her (applicant) and illtreatment given to her on that ground. During the course of her cross-examination on behalf of the respondent, the said evidence of the applicant has not been shattered. Therefore on the basis of above said

evidence, it can be said that there was harassment to the applicant at the hands of the respondent and therefore though she has a son from the wedlock with the respondent, she has no alternative than to reside separate from the respondent.

10. Exh.19 - copy of common judgment in HMP Nos. 68/2007 and 42/2006 shows that first petition was filed by the respondent against the applicant/wife for divorce under section 12(A) of the Hindu Marriage Act and subsequent petition was filed by the applicant/wife against the respondent/husband for restitution of conjugal rights and divorce petition of the respondent was rejected with costs and HMP No.42/2006 of the applicant/wife was decreed with costs. This shows that the applicant was ready to cohabit with the respondent husband. As per finding of issue No.1 in the said petition of applicant/wife, she had proved that she was illtreated by the respondent physically as well as mentally. Thus, the decision in HMP No. 42/2006 shows

that though applicant/wife was ready to cohabit with the respondent husband, the respondent husband did not cohabit with her and illtreated her physically as well as mentally. So also from the decision in HMP No. 68/2007 it can be said that the respondent was not willing to cohabit with the applicant/wife and therefore he had filed said petition for dissolution of marriage and it shows that he deserted to applicant/wife. In such circumstances it is quit natural for the applicant/wife to reside separately from the respondent/husband.

11. In his evidence i.e. affidavit (Exh. 45) respondent has stated in accordance with his contentions in the written statement. As regards complaint against him of the applicant more particularly he stated that applicant is handicapped. He stated that he is handicapped by both hands. The applicant was not handicapped by birth but she only sustained burn. This fact was known to both the families. Therefore, there is no question of harassment at the hands of respondent or

his family members as contended by the applicant. It also appears from the evidence of respondent that applicant filed complaint under section 498-A, 504 and 506 read with 34 of I.P.C. against the respondent and his family members. In the cross examination respondent has admitted that he filed divorce petition and applicant had filed petition for restitution of conjugal rights and his divorce petition was dismissed and petition of the applicant for restitution of conjugal rights was decreed. The evidence of witness Ramrao Tompe who is working as the Notary public is on stamp paper in respect of document article 'A' (photo copy) between the parties and evidence of witness Hari Sontakke for the respondent who is a stamp vendor is on purchase of bond paper of article 'A'. Thus the above referred evidence of the respondent and his witnesses is not sufficient to state that without any reason, applicant is residing separate from the respondent.

12. We have carefully considered the evidence of

either sides and on the basis of evidence of applicant and common judgment in HMP Nos. 68/2007 and 42/2006, an inference can be drawn that applicant has sufficient cause to reside separate from respondent without forfeiting her right to maintenance.

13. In her evidence applicant has deposed in accordance with her case that respondent is having qualification of B. Pharmacy and he is appointed as a Aushadnirmata (Pharmacist) in Primary Health Center at Shirasmarg, Tq. Georai, Dist. Beed and his monthly salary is Rs. 35000/-. She stated that she applied for salary certificate of respondent through R.T.I. but respondent played tricks and thus she failed to obtain said certificate. In the cross examination, her evidence as above is not shattered. The respondent in his evidence (Exh. 45) stated that he is serving as a Pharmacist in the Primary Health Center. He stated that applicant is earning Rs. 30000-35000 per month from her medical job and therefore she is able to maintain herself. In the

cross-examination he has denied that his gross salary is Rs. 35000/- per month. Thus from this evidence it is clear that respondent is serving as a Pharmacist in Primary Health Center. During the course of argument, learned advocate appearing for the respondent has also conceded that the respondent is serving and he is getting salary of Rs. 22000/- per month. Said fact is also stated in his affidavit (Exh. 15). In the said affidavit it is stated that he has to spend Rs. 15000/- per month for medical treatment. It is clear from the evidence of applicant and the respondent that respondent is having sufficient means but he has neglected to maintain the applicant. Even if applicant has any income, it cannot be said to be sufficient to maintain herself as contended by the respondent.

14. For all the reasons discussed above we hold that applicant has sufficient reason to reside separate from the respondent and that having sufficient means the respondent has neglected to maintain her. Therefore

considering above evidence regarding income of the respondent, monthly maintenance of Rs. 8000/- was rightly granted by the trial Court to the applicant. Considering the fact that son of the applicant is also residing with her, the said amount of maintenance cannot be said to be excess/exorbitant. We, therefore, hold that the trial Court has rightly awarded maintenance to the applicant by the impugned judgment and order. There is no reason to interfere with said judgment and order. Thus the appeal being devoid of merits, same is liable to be dismissed. Accordingly, we dismiss the same with no order as to costs.

15. In view of dismissal of the Family Court Appeal, connected Civil Applications stand disposed of and needless to state that respondent-wife is permitted to withdraw the amount as requested in Civil Application No.3919 of 2018 as per prayer clause "B".

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]