

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

CIVIL REVISION APPLICATION NO. 564 OF 2017

Ramesh Ramchandra Holkar	...	Applicant
V/s.		
Ratan Ramesh Holkar & Ors.	...	Respondents

Mr.Ravindra S. Pachundkar for the Applicant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the Applicant.

- 2] By this Civil Revision Application, filed under Article 227 of the Constitution of India, the Applicant is challenging the order dated 20th June, 2017 passed by 10th Jt. Civil Judge Senior Division, Pune, below the application at Exhibit-18 in Special Civil Suit No.1264 of 2015.

- 3] The said application at Exhibit-18 was filed by the present Applicant, who is original Defendant No.1, in the suit before the trial Court, under Order-7 Rule-11(d) of the Civil Procedure Code (for short

“C.P.C.”) challenging the maintainability of the suit for maintenance filed by Respondent No.1 herein under Section 18 of the Hindu Adoption and Maintenance Act, 1956.

4] The submission of learned counsel for the Applicant is that in the year 1998 itself, Respondent No.1 had filed the application for maintenance under Section 125 of Criminal Procedure Code (for short “Cr.P.C.”). In that application, the compromise was arrived at between the parties on 1st August, 1999. The compromise pursis to that effect was filed before the said Court. The said compromise was accepted and application was disposed of. As per the said compromise, Respondent No.1 had received the lump-sum amount of maintenance of Rs.50,000/- and has voluntarily given up her right to claim maintenance in future. In view thereof, as the Applicant has already paid the said amount of Rs.50,000/- to Respondent No.1 and has also constructed one room for her residence, now her suit for seeking maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 cannot be tenable. Therefore, as there is no cause of action for filing the suit, her plaint needs to be rejected under Order-7 Rule-11(d) of C.P.C..

5] Respondent No.1 has denied that the Applicant has acted as per the terms of compromise. It is also her case that the Applicant had taken advantage of her illiteracy for getting the compromise pursis.

6] The trial Court was, after hearing learned counsel for both the parties, pleased to reject the said application. Being aggrieved thereby, this Writ Petition is preferred.

7] While challenging this order of the trial Court, learned counsel for the Applicant has taken this Court through the compromise pursis arrived at between the parties, the copy of which is produced in this Writ Petition, at page 85, to submit that in the Criminal Application No.168 of 1998, Respondent No.1 has compromised with the Applicant and the said compromise was recorded before the Court, therefore there is no question of the Applicant taking advantage of her illiteracy. It is submitted that Respondent No.1 has not disputed that as per the said compromise, she had received the amount of Rs.50,000/- as lump-sum towards maintenance and has voluntarily given up her right to claim future maintenance. The Applicant has also constructed one room for her residence. Hence, the trial Court has committed an error

in holding that, still Respondent No.1 can file this suit for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956. According to learned counsel for the Applicant, therefore, the impugned order passed by trial Court is required to be quashed and set-aside.

8] In considered opinion of this Court, as rightly held by the trial Court, whether the Applicant has acted in terms of compromise pursis or not is a question of fact. Whether the Applicant has expended the amount for construction of her one room or whether her brother has extended that amount to her is also a triable issue. Hence from plain averments in the plaint, it cannot be said that there is no cause of action to file the suit.

9] Secondly, even assuming that Respondent No.1 has entered into the compromise with the Applicant, by accepting the lump-sum amount of Rs.50,000/- and given up her right to claim future maintenance, that compromise being against the public policy, in view of Section 25 of the Indian Contract Act, such compromise has no legal sanctity. Section 25 of the Indian Contract Act clearly states that any agreement which is opposed to the public policy is not enforceable in a

Court of law and such an agreement is void, since the object is unlawful.

10] In this respect, this Court has in number of its judgments held that such agreement entered into by the wife, giving up her right of future maintenance by accepting lump-sum amount being opposed to the public policy, cannot have any effect. This legal position is also reaffirmed by the Hon'ble Supreme Court in the case of *Nagendrappa Natikar vs. Neelamma*, AIR 2013 SCC 1541, wherein, in the similar facts, it was held that such compromise in proceedings under Section 125 of Cr.P.C. would not preclude the wife from exercising the remedy of suit available under Section 18 of the Hindu Adoption and Maintenance Act, 1956. In this judgment, in paragraph No.10, it was specifically held by the Hon'ble Supreme Court that, Section 125 of Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife, who is unable to maintain herself and her children. Section 125 of Cr.P.C. is not intended to provide for a full and final determination of the status and personal rights of parties, which can be done only in the Civil proceedings. Therefore, the compromise arrived at under Section 125

of Cr.P.C. or any order passed in pursuance of such compromise, cannot foreclose the remedy available to the wife under Section 18(2) of the Hindu Adoption and Maintenance Act, 1956.

11] In view of this clear position of law, to which the learned trial Court has rightly adverted to, there hardly remains any substance in the revision.

12] The impugned order, therefore, passed by the trial Court being just, legal and correct; Civil Revision Application stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]