

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.160 OF 2012

Nitin Chimanlal Shah.] ... Appellant

Versus

1. Bhavana Nitin Shah,]
 2. Chi. Palak Nitin Shah.] ... Respondents

Mr. Nitin Chimanlal Shah, Appellant, present in person.
 None for Respondents.

CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE :- 09 FEBRUARY, 2018

P. C. :-

1. The Appellant has preferred the present Appeal challenging the Judgment and Decree dated 11/09/2012 passed by the learned Judge, Family Court No.4, Mumbai, in Petition No.C-136 of 2006 whereby the Appellant was directed to pay his daughter - Respondent No.2 Rs.4,000/- per month from the date of the said Judgment till she got married and the Appellant was also directed to pay an amount of Rs.3 Lakhs towards her marriage expenses.

2. The aforesaid Petition No.C-136 of 2006 was filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the said Act') at the instance of the present Respondents. The Respondent No.1 Bhavana was married to the appellant. The Respondent No.2 Palak is the daughter of the Appellant and the said Bhavana. The marriage between the Appellant and Bhavana was performed on 05/02/1990 and the Respondent No.2 Palak was born from the said wedlock on 19/11/1992.

3. The Appellant had filed Petition No.A-1082 of 2007 before the Family Court for divorce on the ground of cruelty and desertion and the marriage was dissolved by a Judgment and Decree dated 01/12/2011 passed by the Family Court, Mumbai. The said Decree was confirmed by this Court in Family Court Appeal No.28 of 2012. Thus, the marriage between the Appellant and Bhavana stood dissolved.

4. The present Respondents filed Petition No.C-136 of 2006 before the Family Court, Mumbai under Section 18 of the said Act which is the subject-matter of the present Appeal. Initially, the said petition was dismissed. Thereafter, the Respondents had challenged the said dismissal before this Court vide Family Court Appeal No.29 of 2012 which was allowed by Order dated 21/06/2012 and the Petition No.C-136 of 2006 was remanded back to the Family Court, Mumbai.

5. Thereafter the Judgment and Decree impugned in the present Appeal came to be passed on 11/09/2012. The learned Judge of the Family Court has discussed the evidence before him. The maintenance asked for by the Respondent No.1 Bhavana was denied on the ground that Bhavana was not his wife due to dissolution of the marriage and therefore, the petition was not maintainable under the said Act. At the same time, the learned Judge discussed the evidence and granted maintenance to the Respondent No.2 Palak as stated above. In addition to the amount of Rs.4,000/- per month, the learned Judge was pleased to direct the Appellant to deposit Rs.3 Lakhs by way of marriage expenses. The learned Judge further observed that though the Respondent No.2 had attained majority on the date of decision of the case, still under Section 20 (3) of the said Act, the Respondent No.2 was entitled for maintenance from the present Appellant, till she got married.

6. The matter reached for final hearing on 06/02/2018. At that time, nobody appeared on behalf of the Respondents and the matter was adjourned in the interest of justice. Even today, nobody appears for the Respondents and therefore, we are deciding this Appeal on the submissions made on behalf of the Appellant.

7. It is not necessary to go in depth in respect of the evidence regarding the financial capacity of the Appellant to provide for maintenance of the Respondent No.2. The Appellant has filed his written arguments and he has highlighted that as of today, the

Respondent No.2 is aged about more than 25 years and she is working and earning. In support of his arguments, he filed an Affidavit affirmed today i.e. 09/02/2018 and he has stated that on information received by the Appellant's sister, the Respondent is working with a private firm. The Appellant has stated that he believes the information to be true. The Appellant orally stated that he has already deposited Rs.3 Lakhs. He has further produced two envelopes containing the cheques for arrears of maintenance for two months which could not be served on the Respondent No.2 because the Respondent No.2 had changed her address. Thus according to him, he has established his *bona fides* and that the Respondent No.2 was earning herself.

8. Though the learned Judge of the Family Court has directed the Appellant to continue paying the maintenance amount till the Respondent No.2 got married, the learned Judge has lost sight of the fact that Section 20(3) of the said Act envisages one more aspect and that is inability or otherwise of the unmarried daughter to maintain herself. Sub-Section 3 of Section 20 reads thus :

“20(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.”

9. Thus, from the arguments and the Affidavit tendered by the Appellant, we are satisfied that today it cannot be said that the

Respondent No.2 is unable to maintain herself. The Respondent has not cared to appear before this Court to put forth her case or to controvert the submissions and averments made by the Appellant. In this view of the matter, we are inclined to accept the submissions made by the Appellant and allow the Appeal. Hence, the following order.

ORDER

- (i) The Appeal is partly allowed and the Appellant is absolved from his liability to pay the maintenance amount of Rs.4,000/- per month as directed by the learned Judge of the Family Court No.4, Mumbai in Petition No.C-136 of 2006, with effect from the date of this order.
- (ii) The Appeal is disposed of in the aforesaid terms.
- (iii) No order as to costs.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)