

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 04 OF 2019

- 1) Ganesh Digambar Thete,
Age 35 years, Occupation Agri. and
Business,
- 2) Ushabai Digambar Thete,
Age 60 years, Occupation Household,

Both R/o Siddheshwar Co-Op. Housing
Society, Old Ausa Road, Latur.

**...Appellants.
(Orig.Respondents)**

VERSUS

- 1) Anuradha Ganesh Thete,
Age 29 years, Occupation Household,
- 2) Anandi Ganesh Thete,
Age 7 years, Occupation Education,
- 3) Ananya Ganesh Thete,
Age 5 years, Occupation Education,
Respondents No.2 and 3 minor
Through Respondent No.1 (Mother),

All R/o C/o Meera Bhagwan Patil,
Laxmi Opal Row House, Ring Road,
Latur.

**...Respondents.
(Orig.Petitioners)**

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Mr. A. N. Sabnis, Advocate for Appellants.
Mr. S. V. Gundre, Advocate for Respondent No.1.

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**CORAM : SUNIL P. DESHMUKH AND
SMT.VIBHA KANKANWADI. JJ.**

DATE : 27-11-2019.

JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Present appeal has been filed by the original respondents challenging the Judgment and decree dated 29-10-2018 passed by learned Judge, Family Court, Latur, in Petition No. C-1/2018 allowing the petition for maintenance and injunction filed by the present respondents.

2. Before turning to the disputed facts, the admitted facts are placed at a glance. Original petitioner No.1 and respondent No.1 got married at Aurad Shahjani on 06-05-2007. Petitioners No.2 and 3 are their children. Respondent No.2 is the mother of respondent No.1. It is further an admitted position that the petitioner No.1 had filed application for maintenance under Section 125 of Code of Criminal Procedure at Bidar in Karnataka. It was allowed and maintenance of Rs.2500/- per month is granted to her whereas maintenance of Rs.2000/- per month each has been granted to petitioners No.2 and 3.

3. The petitioners had come with a case that, initially the petitioner No.1 was treated properly by respondents No.1 and 2, however thereafter, respondent No.2 started quarreling with her.

She used to threaten petitioner No.1 to kill by poisoning her. It is contended that, the petitioner No.1 was ill-treated by both the respondents. Respondent No.1 took signatures of the petitioner No.1 on 17-04-2014 contending that he has divorced her, and thereafter, she was driven out of the house. The maintenance awarded by Bidar Court is not sufficient for the petitioners to maintain themselves. Respondent No.1 is the owner of Beer Bar and Restaurant at the village. The respondents have agricultural land as well as house at Aurad Shahjani, Tagarkheda and Latur. The income of respondent No.1 is stated to be Rs.1,50,000/- per annum, therefore, maintenance @ Rs.5000/- per month was prayed. It was also prayed that the charge of the maintenance be kept on the agricultural property at the above said three places.

4. Respondents appeared but failed to file written statement, and therefore, the matter proceeded without written statement.

5. Petitioner No.1 examined herself only and it appears that documentary evidence is also produced.

6. After considering the oral as well as documentary evidence, the learned Judge allowed her petition. Maintenance @ Rs.3500/-

per month was granted to petitioner No.1 and @ Rs.3000/- per month to each for petitioners No.2 and 3 from the date of the order. Charge of the maintenance was kept on the properties standing in the name of both the petitioners at the three villages. Order of injunction was also passed.

7. Heard learned advocate Mr. Ameya N. Sabnis for appellants and learned advocate Mr. S. V. Gundre for respondent No.1.

8. It has been vehemently submitted on behalf of the appellants that, no proper opportunity was granted by the learned Trial Court to the respondents to contest the petition. On 25-07-2018 the counselor had placed report regarding failure of the mediation. On the same day order for payment of interim maintenance was passed and the matter was adjourned to 16-08-2018 for filing written statement. On 16-08-2018 the respondents remained absent and matter was directed to be proceeded without written statement. On 11-09-2018 the respondent was present and then he paid certain amount towards interim maintenance, but application was not filed on his behalf for order regarding setting aside the matter to proceed without written statement. On 26-10-2018 petitioner filed her affidavit-in-chief. Respondent was absent, however on the same day

order for no-cross was passed and the matter was kept for pronouncement of Judgment, thereby absolutely no opportunity was given to contest the petition. It also appears that, the learned Judge did not consider the maintenance awarded by Bidar Court. Merely on the basis of the talks which the Court had with the respondent at the time of passing order of interim application, it appears that the maintenance has been awarded. He, therefore, prayed for setting aside the Judgment and decree and remanding the matter to the concerned Court for giving an opportunity to the respondents to file written statement.

9. Per contra, the learned advocate for respondents submitted that, the perusal of the Roznama would show that, though the opportunity was available to the respondents / present appellants to get the order of proceeding the matter without written statement setting aside and by filing written statement they could have contested the petition, yet they had not taken any step, and now they cannot blame the Court. Appropriate order has been passed by the Trial Court which need not be interfered with.

10. At the outset it can be said that, merely because the dates were given by the learned Trial Court in quick succession without

leaving much gap, cannot be the ground for the present applicant to say that, no proper opportunity was given. The fair opportunity ought to have been definitely given by the learned Judge of the Family Court for the respondents to contest the matter. The learned Judge ought to have also seen that on two or three occasions the learned advocate for the petitioner had sought adjournment. Under such circumstance, by giving an opportunity to the respondents, the matter could have been adjudicated. When the affidavit-in-chief was filed by the petitioners on 26-10-2018, the learned judge could have adjourn the matter for cross on the next date taking into consideration the fact that respondent and his advocate were absent. It was with the background that, on the earlier date the adjournment was sought by the petitioner and prior to that the Judge himself was on concessional off. Directly keeping the matter for pronouncement of Judgment appears to be a hurried step taken by the learned Judge. No doubt at the time of passing the interim maintenance order some inquiry was made by the learned Judge orally with the husband and then the figure has been arrived at, that does not mean that, it could have been considered while assessing the evidence.

11. The documents as it appears from the record were only the 7/12 extracts of the land out of which only one land appears to be in the name of respondent No.1, whereas two plots are in the name of respondent No.2. The question ought to have been also considered by the learned Trial Judge was, 'whether the respondent No.2 has any income from the open plot standing in her name ?' and 'whether she can be directed to pay maintenance to the daughter-in-law when her son is alive ?'. A charge of the maintenance has been kept on the lands in the name of respondents No.1 and 2. As regards charge on the land of respondent No.2 is concerned, there appears to be a legal mistake that has been committed by the learned Trial Judge. The maintenance that is admittedly awarded by Bidar Court appears to have not been considered while arriving at the quantum. Therefore, taking into consideration all these aspects it would be in the interest of the both the parties that the matter should be remanded to the concerned Court for giving an opportunity to the respondents in the original matter to file their written statement and then allow both the parties to lead proper evidence. For the reasons aforesaid, following order is passed.

ORDER

- 1) Appeal is hereby partly allowed.
- 2) The Judgment and decree passed in Petition No. C-1 of 2018 by learned Judge, Family Court, Latur, dated 29-10-2018, is hereby set aside. The matter is restored to the file of the Judge, Family Court, Latur.
- 3) The concerned Court is directed to give an opportunity to the respondents to file their written statement and contest the matter.
- 4) The respondents should file their written statement on or before 31-01-2020, and thereafter, the further steps be taken by the learned Judge.
- 5) Needless to say that, both the parties be given opportunity to lead evidence after framing of the points.

(SMT. VIBHA KANKANWADI)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

vjg/-.