

. The appellant father-in-law of respondent No.1 who is directed to pay monthly maintenance of

Rs.3000/- to respondent No.1 and Rs.2000/- per month to her daughter Arya total Rs.5000/- per month from 17.01.2016 till respondent No.1 is actually put in possession of her and her daughter's share in the co-parcenery property and who has been restrained from alienating the agricultural land in Gut No.208, House No.1122/1 situated at village Ter, Dist. Osmanabad and house property situated at Latur bearing No.2/2162/8 till shares of respondent No.1 and her daughter in ancestral properties are separated and given in their possession, by the Judge, Family Court, Latur as per the judgment and order dated 03.10.2018 in petition No.C-38/2017 (old RCS No.502/2016) under section 19 of the Hindu Adoption and Maintenance Act, 1956, has preferred this appeal aggrieved by the same. Respondent No.2 is wife of the appellant.

2. Briefly stated the facts are that respondent No.1 married to son of the appellant on 18.06.2011. Husband of the respondent No.1 was serving in Oracle Pvt. Ltd. at Bengaluru. Respondent No.1 cohabited with him and she delivered a daughter namely Arya at the time of filing the petition. Husband of respondent No.1 committed suicide on

17.01.2016 leaving behind respondent No.1 and her daughter. Since death of her husband, respondent No.1 has been residing with her parents. She is educated unemployed. She has no source of income and she is unable to maintain herself and her daughter. The appellant and respondent No.2 (Ori. respondents) failed to provide maintenance to them. They are having agricultural land Gut No.208, admeasuring 14.50-H, out of which 1.59-H is in the name of Sunil Vyas, 3.74-H is in the name of Shailesh Vyas and 3.74-H is in the name of husband of respondent No.1. The appellant and respondent No.2 are cultivating these lands since long. There is also house properties referred earlier. The appellant and respondent No.2 refused to pay maintenance to respondent No.1 and her daughter. Therefore, respondent No.1 filed suit/petition for monthly maintenance of Rs.20,000/- for herself and her daughter from last 11 months prior to filing the petition and also future maintenance, at the same rate, also prayed for injunction to restrain the appellant and respondent No.2 from creating third party interest in the land Gut No.208, house situated at village Ter, Tq. Osmanabad and other house situated at Latur.

3. The appellant (Ori.respondent No.1) filed written statement and he did not dispute his relationship with respondent No.1 and her daughter. It is his contention that the property situated within the limits of Latur Municipal Council bearing House No.2/2162/8 is his self acquired property. He was serving in MSEB and out of his own earnings, he has purchased the said property. Therefore, respondent No.1 or his deceased son Prasad has no right or title in the said property. He also contends that there is no land in his name. Land admeasuring 1.59-H is owned by Sunil Vyas, his nephew and other piece of land admeasuring 3.74-H is in the name of Shailesh Vyas and Land admeasuring 3.74-H is in the name of his son deceased Prasad. There was a partition. According to him respondent No.1 (original petitioner) cannot claim maintenance. According to him after suicide of his son, respondent No.1 had gone to her parental house with her belongings and ornaments. Therefore, she had no occasion to request him for maintenance. There is no joint family since aforementioned partition between the appellant and his son. Therefore, respondent No.1 is not entitled to maintenance. It is contended

that due to family dispute his wife is residing at Pune with his daughter and they have filed suit against him. They have asked for maintenance from him. He has to look after his old mother who requires medical treatment. Respondent No.1 is an educated lady. She is in private service. She owns ancestral property of her father in Gut Nos.152 and 42. Therefore, she is not entitled to maintenance. He thus, prayed to dismiss the petition.

4. Respondent No.2 filed written statement at Exh.34. She also does not dispute her relationship with respondent No.1 and daughter of respondent No.1. She denied all other allegations made against her and her husband the appellant and has taken almost all the pleas which have been taken by the appellant and claimed to dismiss the suit/petition with compensatory costs contending that the respondent No.1 is not entitled to maintenance.

5. Learned Judge of the Family Court had framed as many as six issues at Exh.55.

6. It appears that respondent No.1 (original petitioner) examined herself and examined her mother

as her witness. The appellant and respondent No.2 original respondents did not adduce evidence. Thus, on considering evidence adduced by the respondent No.1, learned Judge of the Family Court allowed the petition by the impugned judgment and order and issued directions to the appellant referred earlier in the opening paragraph of this judgment. Therefore, this appeal by the appellant original respondent No.1 on several grounds mentioned in the appeal.

7. Mr.Girish Rane, learned counsel for the appellant submitted that the respondent No.1 initially filed the suit filed in the Civil Court for maintenance. The appellant appeared in the said suit. Thereafter, the Family Court was established at Latur. Suit for maintenance filed by respondent No.1 was transferred to said Court. There was no notice to the appellant of transfer of the said suit to the Family Court, Latur. The Family Court, Latur ought to have issued notice to the appellant regarding transfer of the suit/proceeding to the said Court. It is seen from the impugned judgment that original respondents did not adduce evidence and the Family Court heard only the advocate for the

original petitioner. Thus, according to the learned counsel for the appellant no proper opportunity was given to the appellant to cross-examine respondent No.1 and her mother and on considering their unchallenged evidence the Family Court allowed the petition. Therefore, the learned counsel submitted that impugned order is not sustainable and the same be set aside and the matter be remitted to the Family Court for adjudication afresh to give proper opportunity to the aggrieved parties including the appellant to cross-examine respondent No.1 and her witness and to adduce evidence as per law, by allowing the appeal.

8. Ms.Priti Wankhede, learned counsel h/f Mr.Avinash Deshmukh, learned counsel for respondent No.1 does not dispute that the appellant and his wife present respondent No.2 were continuously absent before the Family Court after the suit was transferred to the Family Court, Latur and that the advocates representing the appellant and respondent No.2 were not present before the Family Court when the evidence of respondent No.1 and her mother was recorded and the arguments were heard. Learned counsel for respondent No.1 submitted that the

Family Court properly considered the evidence adduced by the respondent No.1 and rightly directed the appellant to pay maintenance to his daughter-in-law and grand-daughter by the impugned judgment and order.

9. We have carefully considered the submissions made by the learned counsel for the parties, perused the impugned judgment and copy of roznama in the original proceeding. On perusal of the said copy of roznama which is marked "X" for identification purpose it is seen that initially proceeding was registered as RCS No.502/2016 when it was instituted in the month of November, 2016 and it was pending in the Civil Court till 25.04.2017 and thereafter it was transferred to the Family Court, Latur as per the order of the Principal District Judge, Latur. Roznama further shows that on 25.04.2017 the suit came before the Family Court after its registration as petition NO.C-38/2017 and on the same date parties and their advocates were absent. It appears that thereafter on 12.07.2017 there was noting in the roznama that notice to both the parties served and request was made on behalf of the defendants'/respondents advocate to continue

vakalatnama and address memo and the petition was posted on 28.07.2017. It appears that thereafter from 28.07.2017 continuously parties and their advocates were absent till 25.04.2018. Thereafter, on 07.06.2018 both the parties were absent. So also, it appears that on 03.07.2018 the matter was referred to Marriage Counselor and on the said date respondent No.1 and her advocate were only present. It appears that on 17.08.2018 affidavits of examination-in-chief of respondent No.1 and her mother were filed and petition was adjourned to 21.08.2018 for their cross-examination on behalf of the present appellant and respondent No.2. Thereafter, since 21.08.2018 continuously for eight days till 03.10.2018 the respondents i.e. appellant and respondent No.2 and their advocates were absent and as such the petition was allowed and proceeding was closed on 03.10.2018. It appears from the above contents of roznama that notice after transfer of the proceeding to the Family Court, Latur was served on both the parties and appearance pursis was also filed by the advocates for the defendants i.e. original respondents before the Family Court, Latur. Therefore, strictly the arguments of the learned counsel for the appellant that there was no notice

to the appellant after transfer of the proceeding to the Family Court is not acceptable. However, one thing is clear that continuously from 21.08.2018 for eight days till proceeding was closed the appellant, respondent No.2 and their advocates were absent and the proceeding was closed and decided without giving an opportunity of cross-examining respondent No.1 and her mother and without giving an opportunity of adducing evidence to the appellant and his wife the respondent No.2. This fact is also clear from the impugned judgment and order. Therefore, we are of the view that it is just to give an opportunity to the appellant and respondent No.2/original respondents to cross-examine the present respondent No.1 and her witness and to adduce their evidence without going into other aspect of the matter by remitting the matter to the Family Court, Latur by setting aside the impugned judgment and order by partly allowing the appeal, in the ends of justice. Therefore, following order is passed:

ORDER

- i. Appeal is partly allowed.
- ii. The impugned judgment and order dated

03.10.2018 directing the appellant to pay maintenance to respondent No.1 and her daughter is set aside.

iii. Matter is remitted to the Family Court, Latur for adjudication after the stage of filing written statement.

iv. Learned counsel for respondent No.1 original petitioner states that she would prefer to have amendments to the pleadings. It is open for her to make appropriate application to the Family Court, Latur.

v. Having regard to the antecedents in the matter, particularly, the way in which there had been consistent absence on behalf of appellant, in order to balance the position, we would allow the amount deposited in this Court to be withdrawn by original petitioner-daughter-in-law, subject to undertaking that its fate would depend on final decision rendered by the Family Court and in case, the same is against interest of the daughter-in-law, she would re-deposit the same in the Court within a period of four months.

vi. The proceedings are expedited. It is expected that the Family Court would dispose of the proceedings within a period of eight months from the date of receipt of writ of this order. No costs.

vii. In view of disposal of the appeal, the civil applications No. 2145 of 2019 and 5413 of 2019 do not survive and are disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]