

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.663 OF 2016
(WITH CA/3839/2019)

WITH

SECOND APPEAL NO.664 OF 2016
(WITH CA/3838/2019)

Sudarshan s/o Baburao Khande,
Age 40 years, Occupation Suspended
Service (Head Master) At Present Nil,
Dr. Babasaheb Ambedkar Vidyalyaya,
Gautam Nagar, Parbhani. ...Appellant.

(Appellant/ Original defendant)

VERSUS

Sau. Indumati w/o Sudarshan Khande,
Age 37 years, Occupation Household,
R/o Jalalpur Tq. Dist. Parbhani. ...Respondent.

(Respondent / Original Plaintiff)

.....
Advocate for Appellant : Mr. A. S. Usmanpurkar.
Advocate for Respondent : Mr. V. P. Kadam
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Judgment :
26-09-2019.**

**Date Of Pronouncing The Judgment :
08-11-2019.**

JUDGMENT :

1) Both these appeals are arising between same parties. They are husband and wife. In Second Appeal No.663 of 2016 the husband is challenging the concurrent Judgment and decree passed in Regular

Civil Appeal No.61 of 2013, by learned Adhoc District Judge-2, Parbhani, dated 12-10-2015, thereby maintaining the Judgment and decree passed in Regular Civil Suit No.149 of 2009 by learned 6th Joint Civil Judge, Junior Division, Parbhani, dated 07-03-2013, whereby the suit for getting maintenance under Section 18 of the Hindu Adoption and Maintenance Act came to be partly decreed.

2) In Second Appeal No.664 of 2016 the husband is challenging the Judgment and decree passed in Regular Civil Appeal No.54 of 2013, by learned Adhoc District Judge-2, Parbhani, dated 12-10-2015, whereby the Judgment and decree passed in Regular Civil suit No.149 of 2009, by learned 6th Joint Civil Judge, Junior Division, Parbhani, dated 07-03-2013, modifying and enhancing the maintenance amount by partly decreeing the appeal filed by the wife.

3) It is admitted fact that, the husband and wife got married in year 1986 as per their customs and rites. The wife had filed the petition for getting maintenance by contending that, she was treated properly by the husband for about only one year, and thereafter, he started demanding amount from her for purchase of scooter. She was harassed and then after beating her, she was sent to her parental house. After persuasion by her parents, she was left with the husband. They have begotten a son in the year 1990, but thereafter, again the husband started harassing her on the same

count. It was contended that, after she was driven out of the house, the husband has performed illegal marriage with one Suman, and therefore, the present wife has filed criminal proceedings against the husband. She had filed suit for getting maintenance i.e. Regular Civil suit No.155 of 2006, however it was dismissed in default on 20-06-2007. She is unable to maintain herself. The husband is Headmaster in a school and getting huge amount as salary. He has additional income in the form of rent. His parents are not depending on him as they are pensioners, and therefore, the wife prayed for maintenance to herself as well as to her son.

4) The husband resisted the claim and denied the allegations made against him. It was contended that, the wife has left him without assigning any reasonable ground. Since she has deserted him, she is not entitled to get maintenance. It was also contended that, maintenance has been granted in a proceedings under Section 125 of Code of Criminal Procedure in Criminal Misc. Application No.276 of 2009, and therefore, she is not entitled to claim maintenance once again. She is getting benefit under 'Sanjay Gandhi Niradhar Yojana', and therefore, she can maintain herself.

5) After the issues were framed, parties have led oral as well as documentary evidence. Taking into consideration the evidence on record, it was held that, the husband has deserted and refused to maintain the wife. She is unable to maintain herself. The husband

has sufficient means to maintain the wife, and therefore, maintenance was granted @ Rs.2500/- per month.

6) As aforesaid, both the parties challenged the said Judgment and decree before the learned Appellate Court. The appeal filed by the husband was dismissed and the appeal filed by the wife was partly allowed. The amount of maintenance has been enhanced to Rs.3,500/- per month. Hence, both these second appeals.

7) Heard learned Advocate Mr. A. S. Usmanpurkar for appellant husband and learned Advocate Mr. V. P. Kadam representing the respondent wife.

8) It has been vehemently submitted on behalf of the appellant husband that, by way of subsequent events and in view of the affidavit filed by the appellant, a fact has been brought on record that, the husband was prosecuted under Prevention of Corruption Act and he has faced Special Case No. (ACB) No.2 of 2014 before learned Sessions Judge, Parbhani. The husband has been convicted on 19-10-2016 and has been directed to undergo rigorous imprisonment for four years and pay fine of Rs.3000/-, in default rigorous imprisonment for 3 months, for committing offence punishable under Section 7 of the Prevention of Corruption Act and equal punishment has been awarded for committing offence punishable under Section 13 (1) (d) of the Prevention of Corruption Act. Even prior to the trial after the

registration of the offence, the husband was suspended from service on 28-05-2015, and after the conviction, an order has been passed on 14-03-2017 that, the husband will not be entitled to any benefits including pensionary as well as salary, therefore he is not getting either salary or any other emoluments. So also in the meantime, i.e. on 31-10-2017, he has retired from the services. Now he is not getting pension and other service benefits, therefore he is unable to pay maintenance.

9) At the outset, it can be said that, while dealing with second appeal what is required to be shown by the appellant is the substantial question of law as contemplated under Section 100 of Code of Civil procedure. Now by way of subsequent event, the documents have been produced on record to show that the appellant has been convicted and the letters on record show that at present he is not getting any part of his salary or after his retirement any pension and other benefits. This fact has not been refuted by the wife by filing any counter affidavit. Therefore, by taking into consideration the said subsequent event, the substantial question of law though might be relating to the quantum of maintenance, would be as follows ;

“Whether the First Appellate court was justified in enhancing the compensation and granting it in addition to the maintenance granted under Section 125 of the Code of Criminal Procedure ?”

10) Here it is to be noted that, while granting maintenance under Section 18 of the Hindu Adoption Act and Maintenance Act, what was required to be seen by the Court was, as to whether there was any maintenance granted under Section 125 of the Criminal Procedure Code. Even after taking into consideration that amount, whether then the wife can survive would be a question. It cannot be stated that, since maintenance has been granted under Section 125 of Criminal procedure Code, the wife has no right to get maintenance under Section 18 of the Hindu Adoption and maintenance Act. Both the remedies are different and they will have to be considered on its own merits. Here in this case, there is concurrent finding by both the Courts that, the wife has been deserted and has not been looked after or maintained by the husband, and therefore, she is entitled to get maintenance when she is unable to maintain herself. While assessing the maintenance amount, what was considered by both the Courts was, the salary of the husband as Headmaster. However, in view of the subsequent event it can be said that, the said source of income is no longer available to the husband. The wife is already getting maintenance @ Rs.3000/- per month under criminal proceedings and whatever was granted by the Trial Court and then enhanced by the District Court was in addition to the said amount of maintenance. It has not been brought on record that, the said order of granting maintenance under criminal proceedings has been

disturbed or set aside by any Courts. That means, the said order is still in existence and the husband is bound to obey the said order. The only question is regarding the amount now awarded under this proceedings.

11) The present appellant is an able bodied person. Though he might have lost one source of income, i.e. his salary as Headmaster, and then because of his own acts, he appears to have been convicted and now the pension has been stopped. That cannot be the ground to totally set aside the entire decree. However, the only amount can be reduced so as to commensurate with the requirement of the wife to survive, and therefore, revival of the original order passed by the Trial Court would be the just and appropriate step. In other words whatever enhancement has been granted by the learned First Appellate Court in the appeal filed by the wife deserves only to be set aside taking into consideration the subsequent event. Hence, following order.

ORDER

- (1) Second Appeal No.663 of 2016 is hereby dismissed.
- (2) Second Appeal No.664 of 2016 is hereby partly allowed.
- (3) The Judgment and decree passed in Regular Civil Appeal No.54 of 2013, by learned Adhoc District Judge-2, Parbhani, dated 12-10-2015, is hereby set aside to the extent of enhancing the maintenance by modifying the Judgment and decree passed in Regular Civil Suit No.149

of 2009, by learned 6th Joint Civil Judge, Junior Division, Parbhani, dated 07-03-2013.

(4) It is clarified that, only the Judgment and decree in Regular civil Appeal No.54 of 2013 to the extent of enhancement is set aside thereby reviving the Judgment and decree passed by the learned Trial Court.

(5) In view of the facts above, parties to bear their own cost.

(6) Pending civil applications stand disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.