

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 63 OF 2018
WITH
CIVIL APPLICATION NO. 7244 OF 2018

Tukaram s/o Harischandra Aalure,
Age : 60 years, Occu : Nil,
R/o : At present Gayatri Nagar,
Near Hanuman mandir, .. Appellant/ Orig.
Taluka and District : Latur (Defendant-Husband)

versus

Mudrikabai w/o Tukaram Aalure,
Age : 55 years, Occu : Business
and H. H. , R/o Babhalgaon, .. Respondent /
Taluka Latur, District Latur (Orig. Plaintiff-Wife)

Mr N. D. Kendre, Advocate for appellant
Mr Sanjay V. Mundhe, Advocate for respondents

CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.

DATE : 29th March, 2019

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. This is family court appeal preferred by husband against judgment and decree dated 12-07-2017 passed by Judge, Family Court, Latur, partly decreeing petition bearing No. C 3/2017 (Old regular civil suit bearing no. 472 of 2013) filed by wife.

3. Aforesaid proceedings were initiated by wife pursuant to section 25 of the Hindu Adoptions and Maintenance Act, 1956 (The Act) for enhancement of maintenance amount to ₹ 5,000/- per month from ₹ 750/- per month originally granted in earlier proceeding bearing regular civil suit no. 739 of 1999.

4. Indisputable facts as would emerge are, appellant and respondent were married in 1985 and from the wedlock son, namely, Pandurang has been begotten. Subsequently, relationship soured and deserting respondent – wife, appellant – husband is stated to have performed second marriage with one Shivnanda around 1990.

5. Respondent – wife had, therefore, instituted regular civil suit bearing no. 739 of 1999, seeking maintenance for herself and son Pandurang. Said suit had been decreed on 31-03-2001 granting maintenance at the rate of ₹ 750/- to each, i.e. respondent herein and son Pandurang. Appeal preferred against the same by present appellant – husband bearing no. 16 of 2002 had been dismissed on 31-01-2003. There had been no alteration in monthly maintenance

amount of ₹ 750/- since 2001 to 2013. Regular civil suit bearing no. 472 of 2013, subsequently numbered as Petition No. C-3/2017 had ensued at the instance of present respondent – wife seeking enhancement in maintenance to her to ₹ 5000/- per month under section 25 of the Hindu Adoptions and Maintenance Act, 1956 and the same had been enhanced to ₹ 3000/- per month under the judgment and order dated 12-07-2017 impugned in this appeal.

6. The first and foremost submission canvassed on behalf of appellant by learned counsel Mr N. D. Kendre is that the proceeding initiated by the respondent is deficient of the basic requirement of there being material change in the circumstances justifying alteration in maintenance amount. He submits that besides aforesaid, requirements under section 23(2) (a)(b) of the Act and rest of the requirements could not be said to have been properly taken into account while awarding enhanced maintenance. He submits that it has emerged on record that the respondent and son Pandurang have been running *spandan* gift shoppe and that they are possessed of earning source whereas earning of appellant has taken downward turn on his retirement. The needs have proportionately grown on

account of his health as well as health of second wife and maintenance of three children from second wedlock.

7. Alongside, he submits, it would not be said that needs of respondent have grown in said proportion. The son Pandurang is taking her care and additionally as referred to above, respondent has an earning source. Besides, respondent continues to get ₹ 750/- per month awarded under earlier decree. He, therefore, entreats this court to look at the matter objectively and set aside impugned decree or at least modify the same downwardly.

8. On the other hand, learned counsel Mr Sanjay Mundhe appearing on behalf of respondent – wife submits that it is obvious that there have been material changes occurred over a period of fifteen years after decree in earlier proceeding instituted in 1999 especially consumer price index has gone up spiraling upward, inflation is going day by day unchecked, respondent no. 1 is growing old requiring medical aid frequently. These are material circumstances which are not only discernible but are easily perceptible and that precisely has been properly appreciated and taken into account while impugned decree

is passed by the family court. He, therefore, submits that though, purportedly an admission with regard to running of a gift shoppe has been extracted from respondent, the family court has rightly gauged the situation finding that respondent suffers physical handicap and the same has received its due while appreciating the matter. He submits that respondent has no earning source worth the name and has to depend on meagre amount of maintenance being received from the appellant for her living.

9. He submits that it is legal as well as moral obligation of the husband to maintain his wife throughout her lifetime unless case is covered by exceptions therefor. He submits that the appellant has not been able to demonstrate about respondent's case being covered by any such exception saving the husband from maintenance to wife.

10. Mr Munde purports to draw attention to the observations from the judgment of the family court particularly about monetary benefits received by appellant from the service he had rendered. He emphasizes that learned judge of family court has taken into account that even around 2014 the husband had been getting at least ₹

15,000/- to ₹ 20,000/- per month towards pension. He further emphasizes that it is not the case of appellant that he has not received any benefit at all on his retirement. He submits that second marriage by appellant being not marriage in law would hardly affect legitimate claim of the respondent. He, therefore, urges to dismiss the appeal.

11. In the matter, it appears, the respondent has contended that the appellant had not been regular in tender of monthly maintenance amount as originally granted. Respondent has been growing in age and consumer price index continually went on increasing. Respondent with growing age is required to attend to her health problems frequently and the same is expensive.

12. Respondent – wife had referred to that the appellant – husband had been serving in home guard department as driver and had been fetching salary around ₹ 25,000/- per month. Additionally, he has agricultural land at village Babhalgaon, fetching income of ₹ 50,000/- per annum. He also is possessed of a house at Latur which he has leased out on rent at the rate of ₹ 10,000/- per month. All aforesaid, according to the respondent, is indication of that

the appellant would be easily able to bear maintenance amount of ₹ 5000/- per month prayed for.

13. Present appellant had resisted the claims made by the respondent and had filed written statement denying the same, *inter alia*, that he had been earning salary of ₹ 25,000/- per month and about having income from agricultural land and earning rent from house property. He contended that son Pandurang has grown major and along with respondent he has been running carom house and pan/ betel leaf stall. Premises have been given to them by appellant for residence. It is claimed that from the same, mother and son are earning about ₹ 25,000/- per month. While granting decree in regular civil suit bearing no. 739 of 1999 respondent and the son had no source of income, however, circumstances thereafter have undergone complete transformation and respondent and son both have good source of income.

14. Additionally, appellant has referred to that he has been suffering back pain, second wife Shivnanda has been suffering heart disease and therefore huge amount is required to be expended on medical treatment. Further, he

has to maintain three children from the second wife and their educational expenses are also to be taken care of. He, as such, had prayed for dismissal of respondent – wife's claim.

15. With reference to pleadings to aforesaid effect, issues were framed viz; whether amount of ₹ 750/- per month towards maintenance of wife as was originally granted is insufficient, whether prices and living index has gone up and as to whether wife is entitled to increase in the maintenance as prayed for.

16. The family court, under its judgment and order dated 12-07-2017 impugned in this appeal had partly decreed the suit (petition) with proportionate costs, raising maintenance amount from ₹ 750/- per month to ₹ 3000/- per month from the date of the suit.

17. On perusal of the judgment of the family court it appears that all the relevant factors necessary to be considered have been properly taken into account and appreciated with reference to material placed on record. Learned judge has taken into account not only relevant

provisions of the Hindu Adoptions and Maintenance Act, 1956, viz; sections 18, 23 and 25 but has also considered the material on record as can be seen from paragraphs no. 13 to 16 of the judgment impugned. The observations under the same appear to make meticulous reference to the pleadings and past litigation, material as well as service benefits received by the husband – appellant.

18. It appears that in previous litigation, it had been considered that husband – appellant had earning source in the form of service in home-guard department and had been earning around ₹ 7000/- per month. While the situation with regard to second marriage and children from the same had been subsisting and amount of ₹ 750/- per month had been granted to wife – respondent herein under the decree in earlier proceeding and challenge to said decree had failed, the position continued unaltered till present proceeding was initiated by respondent – wife.

19. It appears that the documents at Exhibits 22 and 33 and salary certificate of appellant – husband, Exhibit – 33 disclose that around June, 2014 from total salary of around ₹ 35,000/- per month, take home salary of the appellant

had been around ₹ 26,000/- per month. It has thus been gauged that while the appellant would retire, he would be receiving pension in the range of around ₹ 15,000/- to ₹ 20,000/- in addition to lump-sum amounts which would be received by appellant – husband under different heads. It further appears that though purportedly an admission has been extracted from respondent – wife about her running gift article shoppe along with her son at Babhalgaon which admittedly is a village, nothing has been brought on record by appellant about income from the same. Having regard to location in which the shoppe is claimed to be running, it is easily discernible that earning from the same would be limited and would hardly be said to be source of livelihood and maintenance.

20. Although appellant has claimed that son and mother are running carom house and pan / betel leaf stall, no material has been placed on record with respect to the same. All these aspects have been properly considered by the family court. Besides, those would hardly be considerations while it comes to payment of maintenance under the Hindu Adoptions and Maintenance Act, 1956 while appellant – husband has not been able to bring on

record that the case would be covered by exceptions avoiding maintenance to wife. It may also have to be seen that 2001 to 2017 is a period of fifteen years and perceptibly due to inflation living costs have gone up.

21. In the circumstances, we are disinclined to interfere with the decision rendered by the family court.

22. The appeal is, therefore, dismissed.

23. Civil application, in view of dismissal of appeal, does not survive and is accordingly disposed of.

R. G. AVACHAT,
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-