

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

**FAMILY COURT APPEAL NO. 60 OF 2018.
WITH
CIVIL APPLICATION NO.9743 OF 2018.**

Arvind s/o Sambhaji Shinde
Age : 51 years, occu.: service
R/o Police Training Centre,
Solapur.

Appellant.

Versus

1. Kanchan w/o Arvind Shinde
Age : 41 years, occu.: household
R/o C/o V.B. Ajnikar, Bank
Colony, Vikram Nagar, Latur.
2. Shrawani d/o Arvind Shinde
Age : 21 years, occu.: fashion
designer, r/o as above.
3. Chandana d/o Arvind Shinde
Age : 20 years, occu.: household
R/o as above.
Railway Division, Pune.

Respondents.

Mr. R.B. Aade, Advocate for the appellant.

Mr. N.D. Kendre, Advocate for respondent Nos.1 to 3.

**CORAM : T.V. NALAWADE AND
SUNIL K.KOTWAL, JJ.**

Dated : 21 January 2019.

JUDGMENT (Per Sunil K. Kotwal).

1. This appeal is directed by the opponent / husband against the judgment and order passed by the Judge, Family Court, Latur in Petition No. C-14/2017. Respondents are the original petitioners.

2. Hereinafter the parties are referred to by their status in the original proceeding.

3. The facts leading to institution of this appeal are that the petitioners filed suit for maintenance under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "Maintenance Act"). In that proceeding admitted facts in between the parties are that the petitioner No.1 married with the opponent on 05.07.1994 and petitioner Nos.2 and 3 are their school going unmarried daughters. The opponent is in police service as an Officer and on the date of filing of the petition, he was posted at Police Training Centre, Solapur.

4. Contention of the petitioners is that, after the marriage, petitioner No.1 cohabited with the opponent at Nanded and that time opponent developed illicit relations with his land-

lady. In addition to this, the opponent started physical and mental ill-treatment to petitioner No.1. After the birth of petitioner No.3, the opponent did not take petitioner No.1 for cohabitation. Only after mediation, again the petitioner No.1 started cohabiting with the opponent. After six years the opponent was transferred at Osmanabad. Again ill-treatment to petitioner No.1 was continued. At last, the opponent was transferred at Latur. Even at Latur the opponent continued ill-treatment to petitioner No.1 by beating her with the help of belt. In the year 2014, petitioner No.1 diagnosed for brain tumor and she was operated at Seven Hills Hospital, Mumbai. Even after discharge from the hospital, the opponent continued the same ill-treatment to petitioner No.1. Therefore, all the petitioners started living separate from the opponent at the parental home of petitioner No.1, at Latur. Petitioner Nos.2 and 3 shifted to Pune for their education. Subsequently petitioner No.1 also started living separate from her parents at Latur. Therefore, each petitioner Nos.2 and 3 needed maintenance of Rs. 10,000/- per month and petitioner No.1 needed maintenance of Rs.20,000/- per month to bear the expenditure of her medical treatment as a Cancer patient.

5. Contention of the petitioners is that the opponent used to draw salary of Rs. 80,000/- per month. In addition to this, he had purchased Block No.303 admeasuring 97 Aar, Block No.308 admeasuring 1 Hectare 40 Aar and Block No.313 admeasuring 40 Aar, situated at village Kuslamb, Taluka Barshi, in the name of petitioner No.1. From this agricultural land the opponent used to get income of Rs.5,00,000/- per annum. Except the petitioners no other person depends upon the opponent. Accordingly, the petitioners claimed total maintenance of Rs.40,000/-.

6. By filing written statement (Exh.17) the opponent denied all allegations of ill-treatment to petitioner No.1. He contended that he always treated the petitioners in good manner. Even he bore the expenses of medical treatment of petitioner No.1 when she was operated for brain tumor. He admits the purchase of above-said agricultural land in the name of petitioner No.1. He contended that petitioner No.1 gets entire income from that land, and therefore, the petitioners are not entitled to any maintenance. He contended that he had opened bank account in the name of petitioner No.2 in State Bank of India and he

regularly provided maintenance to the petitioners through the said bank account. According to the opponent, petitioner No.1 on her own accord left matrimonial home alongwith petitioner Nos.2 and 3. Therefore, the petition for maintenance deserves to be dismissed.

7. After considering the evidence recorded by both the parties, the learned trial Court awarded maintenance at the rate of Rs. 10,000/- per month each to petitioner Nos.2 and 3 and at the rate of Rs. 20,000/- per month to petitioner No.1 from the date of filing of the suit. Therefore, this appeal arises.

8. Heard Mr. R.B. Aade, learned Counsel for the appellant and Mr. N.D. Kakade, learned Counsel for the respondents.

9. Learned Counsel for the appellant argued at length and submitted that the maintenance of Rs. 40,000/- per month is exorbitant and needs to be reduced. His next contention is that the petitioner No.1 had source of income from the agricultural land purchased in her name, and therefore, she cannot claim maintenance.

10. Learned Counsel for the appellant has also submitted that petitioner Nos.2 and 3 are major, and therefore, they cannot claim maintenance.

11. Learned Counsel for the respondents submitted that on the basis of evidence of petitioner No.1 Kanchan (PW-1) and her father (PW-2), the petitioners have proved ill-treatment at the hands of opponent, and therefore, petitioner No.1 can claim maintenance even after living separate from the opponent. He submits that the agricultural land purchased in the name of petitioner No.1 is exclusively cultivated by opponent and he takes the entire income from that land. Contention of learned Counsel for petitioners is that the opponent being Police Officer draws monthly salary of Rs. 80,000/-, and therefore, he can easily pay maintenance of Rs. 10,000/- per month each to petitioner Nos.2 and 3 and Rs.20,000/- per month to petitioner No.1.

12. The next contention of the learned Counsel for petitioners is that, under Section 20 of the Maintenance Act, till marriage of petitioner Nos.2 and 3 the opponent is bound to maintain them as they have no source of income.

13. At the time of argument, the learned Counsel for the opponent has placed on record pay slip of the opponent, which is taken on record and marked as Exhibit 'X' for identification. This pay slip shows that the total monthly emolument of the opponent is Rs. 78,530/-. Out of this amount, Rs.7,200/- is deducted towards professional tax and income-tax. Other savings of the opponent in G.P.F., G.I.S. and deductions towards G.P.A. Advance need not be excluded while determining the monthly income of opponent. Thus, the monthly income of the opponent is not less than Rs. 71,330/-. Undisputedly, except the petitioners, no other family member is dependent on the opponent. Thus, at the outset, we must observe that the opponent has sufficient income to provide maintenance to his wife and two unmarried daughters. No evidence has been placed on record to prove that the petitioners have any source of income.

14. After going through the judgment of the trial Court, it emerges that petitioner No.1 Kanchan stepped in witness box and deposed regarding continuous ill-treatment to her at the hands of the opponent. Even the father of petitioner No.1 Kanchan stepped in witness box as PW-2 and supported the

version of petitioner No.1. Even it has been brought on record that since 30 June 2016 the petitioners are living separate from the opponent and they have no other source of income. As petitioner No.1 resides at Latur and petitioner Nos.2 and 3 at Pune for education, the agricultural land situated in Barshi Taluka cannot be their source of income. On the other hand, from the evidence on record only one inference can be drawn that though the above-said agricultural land is purchased in the name of petitioner No.1, in fact the opponent is owner and cultivator of that land and it was purchased only in the name of petitioner No.1, to avoid official complications, as the opponent works as a Police Inspector at Solapur. Thus, apart from the above-referred salary the opponent has also source of income from the agricultural land situated at Kuslamb, Taluka Barshi.

15. No evidence has been placed on record by the opponent to prove that at any time he tried to fetch petitioner No.1 for cohabitation. He has not even taken pains to serve notice to petitioner No.1 requesting her to return to her matrimonial home. Even the opponent did not bother about education of his own daughters. These circumstances on record

are sufficient to hold that the opponent ill-treated the petitioner No.1 and due to cruel treatment at the hands of opponent, the petitioner No.1 had apprehension in her mind that it will be harmful or injurious to live with her husband. The petitioners have also proved that the opponent is guilty of desertion and he abandoned the petitioners without reasonable cause and without their consent.

16. In fact, as the petitioner Nos.2 and 3 are unmarried daughters of the opponent, having no source of income, under Section 20 of the Maintenance Act, the opponent is bound to maintain his both the daughters till their marriage. So also, under Section 18 of the Maintenance Act, the opponent is bound to maintain his wife (petitioner No.1). Though the opponent has opened bank account in the name of petitioner No.2, as observed by the learned trial Court, he deposited meager amount of Rs.5,000/- at two occasions and Rs. 8,000/- at one occasion in the bank account of petitioner No.2. Therefore, obviously the petitioners have proved that the opponent neglected them and having sufficient means, did not provide maintenance to them.

17. Considering the monthly income of Rs. 71,330/- as salary and additional income from agricultural land, certainly the opponent can pay maintenance of Rs. 10,000/- per month to each petitioner Nos.2 and 3 and Rs. 20,000/- per month to petitioner No.1. As the petitioner Nos.2 and 3 reside at Pune for education purpose, their need of Rs. 10,000/- per month each is just and reasonable. So also, as undisputedly the petitioner No.1 is a Cancer patient, certainly she needs minimum amount of Rs. 20,000/- per month towards her maintenance as well as medical expenditure. Therefore, considering the status of parties, their need and income of opponent, the maintenance awarded by trial Court cannot be termed as exorbitant maintenance.

18. In the circumstances, we have no hesitation to hold that the judgment and order passed by the learned trial Court is correct, proper and needs no interference.

19. In the result, Family Court Appeal No. 60 of 2018 is dismissed with costs. Civil Application No.9743 of 2018 for stay is disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE