

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

**SECOND APPEAL NO.476 OF 2019**

Tatyasaheb Pandurang Salve,  
Age 55 yrs Occ. Service  
r/o. Jaygaon, Tq.Parli Vaijanath  
Dist. Beed. **.. APPELLANT**  
**[ORI.DEFT.]**

**VERSUS**

Sau.Panchshila w/o.Tatyasaheb Salve,  
Age 50 yrs. Occu. Business & Housekeeper  
r/o. Sonwala, Tq.Ambajogai,  
Dist. Beed. **.. RESPONDENT**  
**[ORI.PLFF.]**

...

Mr.Vivek V. Bhavthankar, Advocate for the  
appellant.

...

**CORAM : V.L.ACHLIYA, J.**  
**DATE : 14.08.2019**

**PER COURT:**

1] This Second Appeal is directed  
against the concurrent decisions rendered by  
the Courts below.

2] Heard learned counsel for the  
appellant. Perused the judgment and order  
passed by the trial Court in Regular Civil  
Suit No.43/2014, decided on 23.12.2016 and  
confirmed in Regular Civil Appeal No.11/2017,

vide judgment and order dated 17.07.2018 passed by the District Judge-I, Ambajogai, District Beed.

3] Mr.Vivek V. Bhavthankar, learned counsel for the appellant assailed the impugned judgments and orders passed by the Courts below with contention that the Courts below have erred in passing the decree in favour of the respondent - plaintiff and as against the appellant - defendant. It is submitted that the trial Court has erred in proceeding with the case without affording proper opportunity to appellant to defend the case. It is submitted that the application moved by the appellant - defendant, seeking recall of the witness for cross examination was rejected.

4] I have carefully perused the judgment and decree passed by the trial Court and confirmed by the Appellate Court. In my

view the Appeal raises no substantial questions of law to entertain the appeal as against the concurrent decisions rendered by the Courts below. It appears from the judgment and decree passed by the trial Court that the respondent has filed suit seeking permanent alimony @ Rs.20,000/- per month against the appellant-defendant. The relationship between the parties as husband is not disputed. The trial Court has observed that though the suit summons was served upon the appellant-defendant, the defendant failed to file written statement. Hence, the suit proceeded without written statement. The First Appellate Court also observed that though the appellant-defendant had appeared and filed application to set aside the order to proceed *ex parte* against him and same was allowed by order dated 21.01.2015, the defendant failed to comply the order. Hence, the trial Court passed order on 18.06.2015,

to proceed without written statement against the defendant-appellant. It is also observed that the appellant-defendant has filed written notes of argument vide Exhibit-35.

5] In view of the factual aspects noted in the judgment and order passed by the trial Court as well as the Appellate Court, in my view, the contention of the learned counsel for the appellant that no proper opportunity was given to the appellant-defendant to defend the case cannot be accepted. The fact that the trial Court has set aside the order and granted permission to file written statement and to defend the case itself sufficient to discard the contention that no sufficient opportunity was given to defend the case.

6] Perusal of the judgment and decree passed by the trial Court reflects that the suit filed by the plaintiff was partly

decreed. As against claim of Rs.20,000/- per month made by the plaintiff, the trial Court has awarded maintenance @ Rs.3,000/- per month. The reasons and findings recorded by trial Court and confirmed in appeal are based upon due appreciation of evidence adduced in the case. It is noted in the judgment and order passed by the trial court that the plaintiff has examined Shri Jugulkar, PW-2, Junior Clerk working at Majalgaon Irrigation Department, to prove the income of the defendant-appellant. The witness examined by the plaintiff has produced salary certificate of the appellant-defendant showing that the defendant was receiving monthly salary @ Rs.23,267/- per month. On the basis of the income of the appellant-defendant proved to be Rs.23,267/- per month, the trial Court has awarded maintenance at the rate of Rs.3,000/- per month to plaintiff. In that view, there is no perversity in the judgment and order

passed by the trial Court as well as the First Appellate Court. The reasons and findings recorded by the Courts below are quite consistent with the pleadings and evidence adduced in the case. The appeal filed by the appellant is devoid of merits. In absence of substantial questions of law being involved in the appeal, Appeal deserves no consideration. I am, therefore, not inclined to admit the Appeal. Accordingly, the Appeal is dismissed.

**[V.L.ACHLIYA]**  
**JUDGE**

DDC