

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.4 OF 2017

1. Varsha w/o Narayan Waybhase,
Age : 35 years, Occu. Household,
R/o at present c/o Baburao Dagduji
Kaware, Shri Gajanan Krupa Niwas,
Plot No.11, NS-4, CIDCO,
Near Pundlik Nagar Water Tank,
Aurangabad
2. Dhanshri d/o Narayan Waybhase,
Age : 7 years, Occu. Education, **APPELLANTS**
U/G of Appellant No.1 **(Orig. Petitioners)**

VERSUS

Narayan s/o Raosaheb Waybhase,
Age : 37 years, Occu. Medical Officer,
R/o Waybhase Niwas, Renuka Nagar,
Behind Prakash Hotel, Bhingar, **RESPONDENT**
Tq. and District Ahmednagar **(Orig. Respondent)**

Mr. V.M. Jaware, Advocate for the appellants
Mr. V.B. Jagtap, Advocate for the respondent

CORAM : T.V. NALWADE AND
SUNIL K. KOTWAL, JJ.

JUDGMENT RESERVED ON : 6th FEBRUARY, 2019
JUDGMENT PRONOUNCED ON : 21st FEBRUARY, 2019

JUDGMENT (PER : SUNIL K. KOTWAL, J.) :

Heard the learned counsel, appearing for the parties.

2. **Admit.**

3. This appeal is directed by the original petitioners against the order passed by the Principal Judge, Family Court, Aurangabad in Petition No.C-19/2013 filed under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956. The respondent is original respondent. Hereinafter, the parties are referred in accordance with their status in the original proceedings.

4. Undisputedly, petitioner No.1 married respondent on 9th March, 2008 and petitioner No.2 is their minor daughter. Since 2012 till today, petitioners are residing separate from the respondent.

5. In Petition No.C-19//2013, filed by the petitioners under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 ("Maintenance Act", for short), the learned Trial Court, after considering the evidence placed on record, held that the petitioners have proved that respondent abandoned the petitioners and though respondent has sufficient means to provide maintenance to the petitioners, he did not provide any maintenance to them. The Trial Court also held that the respondent is guilty of desertion without reasonable

cause and the petitioners are entitled to live separate and claim maintenance from the respondent. Against that finding, no Cross-Objection or Cross-Appeal is preferred by the respondent. The claim of the petitioners for maintenance is rejected by the Trial Court only on the ground that in the proceeding under Section 20 of the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act", for short), already sufficient maintenance allowance has been granted by the learned Judicial Magistrate First Class (Railway), Aurangabad in Criminal M.A. No.1712/2012. Therefore, the only point for consideration before this Court is whether despite maintenance awarded under D.V. Act, petitioners can claim maintenance under Sections 18 and 20 of the Maintenance Act and what would be the reasonable maintenance.

6. Shri V.M. Jaware, learned counsel for the petitioners submits that the plain reading of Section 20 (1) (d) of the D.V. Act, makes it clear that the relief under Section 20 regarding monetary reliefs is only additional relief and therefore, on the ground of grant of maintenance under Section 20 of the D.V. Act, the Trial Court cannot refuse to award maintenance under Sections 18 and 19 of the Maintenance Act. He has drawn

our attention towards 7/12 extracts to show that the agricultural land is recorded in the names of the respondent, his father and brother. He submits that the respondent even works as Medical Officer and his monthly salary is more than Rs.30,000/- per month. Therefore, the maintenance allowance of Rs.13,000/- per month to both the petitioners and house rent of Rs.5000/- per month is inadequate and can be enhanced, considering medical expenditure of petitioner No.1 towards her cancer treatment. He has drawn our attention towards affidavit of the petitioners and medical certificate as well as bills of medicines in respect of cancer treatment given to petitioner No.1.

7. Shri V.B. Jagtap, learned counsel for the respondent, on the other hand, submits that the maintenance allowance enhanced by the Sessions Court, Aurangabad in Appeal No.96/2014, is adequate considering the earning capacity of the respondent. His next contention is that in absence of pleading regarding medical expenditure of petitioner No.1 for cancer treatment, maintenance allowance cannot be enhanced.

8. We have gone through the affidavit of petitioner No.1 filed in this appeal together with

Histopathology report of petitioner No.1 issued by Speciality Health Care Services, Aurangabad. This report shows that in the month of November, 2015, for the first time, right breast cancer namely "Invasive Ductal Carcinoma Grade-3" was diagnosed to petitioner No.1. The bills of medicines and treatment issued by Manik Hospital and Research Centre, Aurangabad make it clear that for the medical treatment of petitioner No.1 in the year 1916, she had spent about Rs.2,54,478/-. These receipts and medical reports on record indicate that even till today, petitioner No.1 needs medical treatment towards her breast cancer. Otherwise also, it is a matter of common sense that cancer is a very costly ailment and it requires continuous treatment for number of years for full recovery. Therefore, obviously the petitioners are entitled to enhanced maintenance. In Appeal 96/2014, the maintenance is enhanced to the tune of Rs.13,000/- per month for petitioner Nos.1 and 2 and house rent is enhanced to the extent of Rs.5000/- per month.

9. While determining the quantum of maintenance allowance payable to the petitioners, the earning capacity of respondent, his status and reasonable need of the petitioners play important role. Before touching

this point, we would examine whether despite grant of maintenance under Section 20 of the D.V. Act, the petitioners can claim maintenance under Sections 18 and 19 of the Maintenance Act.

10. Section 20(1) (d) of the D.V. Act reads as under :-

"20. Monetary reliefs.-

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to -

(a) *****

(b) *****

(c) *****

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force."

11. A bare glance at above provision makes it clear that the monetary relief under Section 20 of the D.V. Act is a relief, which is in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Thus, after plain reading of Section 20 (1)(d) of the D.V. Act, it becomes clear that grant of monetary

relief under Section 20 of the D.V. Act cannot be a hurdle or legal impediment to award maintenance to both the petitioners under Sections 18 and 19 of the Maintenance Act. Thus, obviously the Trial Court committed error while rejecting the petition for maintenance under Sections 18 and 19 of the Maintenance Act, only for the reason that already, under Section 20 of the D.V. Act, sufficient maintenance is awarded to the petitioners. We hold that despite grant of maintenance under Section 20 of the D.V. Act, the petitioners are entitled to maintenance under Sections 18 and 19 of the Maintenance Act.

12. Now question arises as to what would be reasonable and just maintenance which can be awarded in favour of the petitioners.

13. Undisputedly, the respondent works as Medical Officer, though his appointment is temporary. Therefore, a direction was given to the respondent by this Court, by order dated 25th January, 2019, to file his monthly salary slip and copy of appointment order to ascertain whether the respondent has become permanent employee of the State and what is his gross salary so that the quantum of maintenance can be determined

properly. However, despite this direction given to the respondent, he did not produce copy of his appointment order and salary certificate/slip till the date of conclusion of final hearing of the appeal. Therefore, considering the approximate gross monthly salary of Medical Officer, adverse inference is drawn against the respondent that he is a permanent Government servant and his gross monthly income is more than Rs.40,000/-, excluding compulsory deduction of taxes. In addition to this, it cannot be ignored that the respondent being well qualified doctor can also earn handsome amount even by practising in medicine. In addition to this source of income, the Record of Rights placed on record by the petitioners also indicates that more than two Acres of land is owned by the respondent. This Court also cannot ignore that in the names of father and two brothers of the respondent, above 66 Acres and 25 gunthas of agricultural land is recorded. Thus, except the petitioners, none of family members of the respondent are depending on him. Therefore, considering the status of the respondent as Medical Officer in Government service, his earning capacity as Doctor as well as Agriculturist and the reasonable need of the petitioners in the background of medical treatment of petitioner

No.1 towards her cancer and sky touching prices of essential commodities and the required expenditure of petitioner No.2 for her education, petitioner No.1 is entitled to maintenance of Rs.15,000/- per month and petitioner No. 2 is entitled to Rs.6000/- per month from the date of filing of the petition for maintenance.

14. In the result, the appellants/petitioners would be at liberty to recover the maintenance either under the provisions of the Protection of Women from Domestic Violence Act, 2005 or the Hindu Adoptions and Maintenance Act, 1956, as per the findings arrived at by us in the foregoing paragraphs of this Judgment.

15. The respondent shall pay Rs.10,000/- to the appellants/petitioners towards cost of this appeal.

16. The appeal accordingly stands allowed and disposed of.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

17. The execution of decree passed by this court is stayed for the period of four weeks, subject to

condition of deposit of entire arrears of maintenance by the respondent within a period of fifteen days from the date of passing of this order.

Sd/-
[SUNIL K. KOTWAL]
JUDGE

Sd/-
[T.V. NALAWADE]
JUDGE

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