

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

SECOND APPEAL NO.14 OF 2016

Rajendra Uttam Patil

... **Versus** ...

Ku. Bhagyashree Rajendra Patil

...

Mr. K.C. Sant, Advocate for appellant

Mr. M.S. Shah, Advocate h/f Mr. S.P. Brahme, Advocate for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JUNE, 2019

ORDER :

1 Present appeal has been filed by original defendant challenging the concurrent Judgment and Decree against him. Original plaintiff-present respondent is the daughter of present appellant. She had filed Special Civil Suit No.293/2011 before Joint Civil Judge Senior Division, Dhule for recovery of future marriage expenses under Section 20(3) of Hindu Adoption and Maintenance Act (hereinafter referred to as "Maintenance Act"). She had claimed amount of Rs.7,00,000/-, however, the suit came to be partly decreed and the present appellant-defendant was directed to pay amount of

Rs.3,00,000/- to the plaintiff towards future expenses of her marriage. The said decree was passed on 08.10.2012. It was challenged in Regular Civil Appeal No.288/2012 before District Judge-5, Dhule. The said appeal came to be dismissed on 27.11.2015. Hence, this Second Appeal.

2 The undisputed facts are that plaintiff was born on 12.11.1992. She is residing separately with her mother since 2002. Maintenance has been awarded to her @ Rs.1,000/- per month. On the date of the suit she was 19 years old. Defendant was serving with District Malaria Office at Dhule.

3 Plaintiff had come with a case that she has become of marriageable age and amount would be spent for searching suitable match for her, attending the customs and marriage including engagement ceremony and therefore, she had claimed amount of Rs.7,00,000/-. Defendant resisted the suit by filing written statement stating that the plaintiff as well as her mother are residing separately from him without any reasonable cause and therefore, they are not entitled to get anything. He also placed the facts that his parents are old and he is required to spend them on their maintenance. Further, he has further house at Nashik by raising loan and therefore, he is required to mitigate the loan amount.

4 As aforesaid the suit was partly decreed after considering the

evidence adduced by both the parties.

5 Heard learned Advocate Mr. K.C. Sant for appellant and learned Advocate Mr. Mohit S. Shah holding for learned Advocate Mr. S.P. Brahme for respondent. It has been submitted on behalf of the appellant that when the respondent-plaintiff is residing separately without any reasonable cause, she is not entitled to get any amount from father. So also the learned Courts below have failed to appreciate Section 23 of the Maintenance Act, when no reasonable cause was shown for residing separately. Reasons have not been assigned for granting future maintenance of Rs.3,00,000/-. Further, unless the marriage would have been settled there would not have been cause of action for the plaintiff to file the suit. Per contra, the learned Advocate appearing for the respondent submitted that both the Courts have given detailed reasons which cannot be disputed also on the legal aspect.

6 Appellant is bound to show substantial question of law in Second Appeal, so that this Court can take cognizance of the matter heard. Under such circumstance, the fixation of quantum cannot be considered as it depends on the facts. Therefore, the restricted point that is required to be considered is, as to whether plaintiff could have asked for future maintenance for the marriage. It will not be out of place to mention here

that the learned First Appellate Court has taken into consideration the definition of maintenance under Section 3(B) of the Maintenance Act, so also Section 23 of the said Act, apart from Section 20(3) of the said Act. Defendant is not disputing the relationship. Under such circumstance, he is bound to maintain the daughter. Since she was minor she was residing with her mother separately from the defendant. It appears that no evidence was adduced by the defendant to prove that he had ever tried to obtain the custody of the daughter. Now, the daughter has become major and therefore, she has every right to stay along with the person she likes and therefore the father cannot put a condition that unless she stays along with him he will not bear the expenses of her marriage. The definition of maintenance includes, in case of an unmarried daughter, reasonable expenses of an incidental to her marriage. Therefore, definitely the father is duty bound to make good the marriage expenses or make a provision for marriage expenses of the daughter. Now, it is the say of the defendant-father that the marriage has not been settled and therefore it is a premature suit. Important point to be noted is that the daughter has become major. It can be said that she has become of a marriageable age, though at that time she was 19 years of age and it can be seen that till the filing of this appeal and it is the decision, as it has not been brought on record that she got married. By the time of the decision of the appeal she was around 24-25 years. Definitely that can be considered as a

marriageable age. It would be a fallacious notion to say that unless the marriage is settled the daughter cannot ask for amount as maintenance to mitigate the proposed marriage. The meaning of the word “proposed” here does not mean that it should be settled. The father is duty bound to make a fair provision for a reasonable amount and accordingly it can be said that amount of Rs.3,00,000/- granted is a reasonable amount towards future marriage expenses. Both the Courts have rightly held that Section 23 of the Maintenance Act is required to be interpreted harmoniously and a condition cannot be put to the daughter who has become of marriageable age to stay with father as a condition precedent for marriage expenses to be borne.

7 It cannot be stated that any substantial question of law has been pointed out. The cardinal principle to entertain a Second Appeal under Section 100 of the Code of Civil Procedure is that the appellant should make out the case for framing substantial question of law. The ratio laid down in **Gurnam Singh (D) by LRs. & Ors. vs. Lehna Singh (D) by LRs. in Civil Appeal No.6567 of 2014** decided by the Apex Court on 13.03.2019 is required to be considered, wherein it has been held that the existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of CPC. Reliance can be placed on **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar** reported in **(1999) 3 SCC 722**,

wherein it has been held that

“In a Second Appeal under Section 100 of CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being :

- (i) Contrary to the mandatory provisions of the applicable law;
OR
- (ii) Contrary to the law as pronounced by the Apex Court;
OR
- (iii) Based on in-admissible evidence or no evidence.

Therefore, no case is made out to admit the appeal. Hence, the Second Appeal is disposed of as “**not admitted**”.

(Smt. Vibha Kankanwadi, J.)

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