

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 497/2019.

Ashwinkumar Mahadeorao Chitrakar.

-VERSUS-

Aatri Ashwinkumar Chitrakar.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.B. Gandhe, Advocate for the Appellant.

CORAM : VINAY JOSHI, J.

DATE : 27.11.2019.

Heard.

2. The appellant is original defendant against whom the respondent / plaintiff has filed Special Civil Suit No.565/1996 claiming maintenance and some other reliefs. The trial Court has decreed the suit by which the appellant / defendant was directed to pay maintenance @ Rs.3000/- per month to the respondent from the date of judgment.

3. Being aggrieved by the part of the order pertaining to grant of maintenance from the date of judgment, respondent / plaintiff filed First Appeal No. 185/2011, which came to be allowed. The First Appellate Court has modified the order of the Trial Court and directed the appellant / husband to pay

maintenance from the date of institution of the suit.

4. The appellant / husband has challenged the very same order passed by the First Appellate Court to the extent of grant of maintenance from the date of suit. It is the contention of appellant that the First Appellate Court has not assigned any reason for granting maintenance from the date of suit. My attention is invited to point no.4, wherein the First Appellate Court has simply stated that as per Rule, the claim of maintenance shall be from the date of suit. True, the Appellate Court has not assigned any reason for modifying the order directing appellant to pay maintenance from the date of the suit.

5. The learned counsel appearing for the appellant would submit that normally the order of maintenance shall be from the date of order and not from the date of institution of the suit or application. In support of said contention, he has relied upon a judgment of Hon'ble Supreme Court in case of **Jaiminiben Hirenbbhai Vyas and others .vrs. Hirenbbhai Rameshchandra Vyas and another [(2015) 2 SCC 385]**. The said case, arise from summary mode of maintenance provided under the Code of Criminal Procedure, wherein it is observed that, though it is open for the Magistrate to award maintenance from the date of application, however, it requires to record a reason in support of such order. The said ratio is distinguishable on facts, since the

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matter before the Hon'ble Supreme Court was under Chapter IX of the Criminal Procedure Code, which is a distinct remedy available for the deserted wife to seek maintenance by summary mode.

6. Pertinent to note that Section 125[2] of the Code provides that the maintenance shall be payable from the date of order, and if so ordered or specified, then from the date of application. It may be mentioned here that the existing lis is not under summary mode of maintenance, but, it is a Civil Suit filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956. It may be further mentioned that Section 18 of the 1956 Act does not provide the date from which maintenance is to be awarded.

7. In the matter of maintenance, it shall be always from the date of suit, otherwise, the party seeking maintenance due to delay in disposal of the suit or petition, which may occasion by the act of the Court or one of the party would be deprived of the same. The entitlement of a lady to maintenance can not be suspended indefinitely to be left on the length of the trial which has multiple reasons for delay.2711sa

8. According to the law regarding maintenance, there is an obligation on the husband to maintain his wife, which does not arise by reason of any contract, express or implicit, but, out of jural relationship. It is considered to be husbands' imperative duty and

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solemn obligation to maintain his own spouse. The right of maintenance is statutory one and the object of awarding maintenance is to provide financial assistance to a lady save herself from destitution. The wife is entitled to claim maintenance so far as she remains chest, subject to the conditions laid down in Section 18[2] of the 1956 Act.

9. In case at hand, the trial Court has granted maintenance from the date of order. No specific reasons are canvassed to say that wife has sufficient means to maintain or had any other source of maintenance during pendency of suit to carve out an exception or deviate her from entitlement. Pleadings show that since she is unable to maintain herself, she has approached to the Court of law.

10. The appellant would submit that it was mandatory for First Appellate Court to record reasons while reversing the findings recorded by the trial Court. In this regard he has placed reliance upon the judgment of Hon'ble Supreme Court in case of **Santosh Hajari .vrs. Purushottam Tiwari [(2001) 3 SCC 179]**. Facts of the said case were such that the trial Court dealt with oral as well as documentary evidence and found that the defendant has not tendered any supporting evidence to uphold his plea of adverse possession. The said finding of fact was reversed by the First Appellate Court without assigning any reason. The facts are quite

distinct, since in case at hand there is no reversal of factual finding regarding entitlement or non-entitlement of wife to claim maintenance. The reversal is only technical one to decide whether, such entitlement is from the date of order or from the date of suit.

11. The appellant would submit that during pendency of the suit the order of interim maintenance was prevailing and wife has received the maintenance. The said fact has no impact on the issue with which I am dealing at present. If interim maintenance has been received by the wife, then obviously it would be adjusted while calculating arrears. Precisely, no such requirement like Section 125 of the Code is evident when the suit is particularly under Hindu Adoption and Maintenance Act. In absence of any express provision, there is no reason to think otherwise to disentitle the wife from getting maintenance for the period during which the lis was pending, which was beyond her control. Moreover, under 1956 Act, the award of maintenance can even be passed for the period beyond three years prior to the suit.

12. Considering all these reasons, I do not find that any substantial question of law arise for determination in this Appeal. The same is, therefore, dismissed. No costs.

JUDGE

Rgd.