

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FAMILY COURT APPEAL NO. 67 OF 2018

Shri Rajesh S/o Rameshchand Malviya
Aged about 45 Years, Occu. Service
R/o Opposite Arpan Gas Agency
Ward No.1, Main Road, Dharni,
Tq- Dharni, District-Amravati

..... APPELLANT

... Versus ...

Sau Reena W/o Rajesh Malviya
Aged about 40 Years, Occu. Household
R/o. C/o Shri Gulabchand Motilalji Rai,
Near Police Chowki, Kadbi Bazar,
Amravati.

..... RESPONDENT

Mrs. U.A. Patil, Advocate for the Appellant.
Mrs. I.P. Khisti, Advocate for the Respondent-sole.

CORAM : Z.A. HAQ & S.M. MODAK, JJ.
DATED : 07/01/2020

ORAL JUDGMENT (Per : S.M. Modak, J.):

Heard.

02] **Admit.**

03] As per the judgment dated 23rd January, 2018, the Family Court, Amravati directed the appellant – husband to pay maintenance of Rs. 25,000/- (Rupees Twenty Five Thousand) to respondent – wife. An amount of Rs. 15,000/- was granted to respondent – wife and Rs. 10,000/- was granted to son Nimish. It was to be paid from the date of petition. The appellant – husband is aggrieved by the said judgment and he is before us.

04] The liability is to be continued for son till he attains majority, whereas towards the respondent – wife, it was during her lifetime or till her re-marriage. The maintenance was granted as per the provisions of Sections 18 & 20 of the Hindu Adoptions and Maintenance Act, 1956.

05] With the assistance of both the learned Advocates, we have read the judgment and have seen the record made available. The marriage is not disputed and also the paternity of the son. The main thrust of argument is on quantum. While considering the income of the husband, learned Family Court Judge wrongly considered joint family income of the petitioner and wrongly fixed the quantum, is the main grievance. Learned Family Court Judge refused to grant maintenance prior to filing of the petition.

06] We have perused the reasoning given by learned Family Court Judge. While answering issue No.4 in paragraph 18 of the

judgment, learned Family Court Judge has observed about the conduct of the father of the appellant – husband while executing the partition deed. Deliberately, less share was shown to have been given to the petitioner – husband. He tried to give an explanation that due to his job, he was given less share. The learned Judge has considered the fact of death of parents of the petitioner on 28th April, 2012 and on 9th October, 2017 and observed that their share have devolved on the son/appellant. The learned Judge has also considered the crops shown to have been cultivated on the lands belonging to the appellant.

07] The learned trial Judge while considering the income of the husband has also considered five separate business carried out in different names and they are printed on the marriage invitation card. He tried to plead that he has joint family business. It is an admitted fact that there is no partition of these business (though partition of land is claimed).

08] The learned trial Judge has rightly concluded that the husband is also having income from these business (in paragraph 19). There is documentary evidence showing purchase and sale of plots by the appellant (husband) and that is considered in paragraph 20 of the impugned judgment.

09] There is no dispute that the appellant - husband is working as a teacher in Zilla Parishad School. The gross salary and net salary of

the petitioner – husband is Rs. 42,713/- and Rs. 16,061/-. The amount of deductions is Rs. 26,652/-. The learned trial Judge has rightly refused to consider non-statutory deductions.

10] Though the respondent – wife is graduate in Arts, there is nothing to show that she was earning. The learned trial Judge has discussed in paragraph 23 about the expenses on the son. The learned trial Judge has discussed in detail in paragraph 24. We find that the impugned judgment is a reasoned judgment and the learned trial Judge has rightly arrived at the figure of Rs. 15,000/- and Rs. 10,000/- per month towards maintenance for the wife and the son respectively. So, we find that learned Family Court Judge has rightly appreciated the material on record, and no interference is warranted. Hence, the appeal is liable to be dismissed.

11] We **dismiss** the appeal and parties are directed to bear their own costs.

12] In view of the dismissal of the appeal, **Civil Application (CAO) No. 1774 of 2018** praying for grant of interim order does not survive. It is disposed of accordingly.

JUDGE

JUDGE