IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.38 OF 2021

SAINAND @ SAINATH S/O KASHINATH DHAKNE
VERSUS
KALPANA W/O SAINAND DHAKNE AND ANOTHER
...
Advocate for Appellant : Mr. G. S. Dahale
Advocate for Respondents : Ms. P. R. Wankhede
...

CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.

DATE : 11th OCTOBER, 2021

PER COURT :

1. By this appeal, the appellant husband seeks to challenge the judgment and order dated 27-01-2021 delivered by the learned Family Court in Petition No. C-10 of 2015 and Petition No. E-230 of 2016. The impugned order dated 27-01-2021 was subject matter of a review petition filed by the appellant in Misc. Civil Application No. 04 of 2021. By order dated 04-03-2021, the learned Family Court has rejected the said application and at the same time, after noting the atrocious behaviour of the advocate Mr. V. K. Jadhav, Aurangabad, the Court has even debarred him from appearing in the said proceedings, before the said Court. The language used by the said advocate, including adjectives used against the High Court and even the learned Judges of the District Courts, and his intemperate behaviour in the Court, led the learned

Family Court in passing the said order. Conspicuously, the said order dated 04-03-2021 has not been challenged by the petitioner in this appeal.

2. We have extensively heard the learned advocates for the respective sides. The issue raised before us is as regards the learned Family Court having granted Rs.15,000/- as monthly maintenance for the respondent wife and Rs.15,000/- per month maintenance for the girl child (14 years) born out of the marriage.

3. Though we have extensively heard the learned advocate for the appellant and have perused the appeal paper book, running into 383 pages, as well as the case law relied upon, we find that following factors are glaring :-

a) Nowhere in the memo of the appeal has the appellant stated as to what is his profession and what was his annual income, since 2011-12 onwards, as this dispute between the parties dates back to the said year.

b) In the memo of the appeal, it is not mentioned as to what is his turnover and his net income.

c) The girl child born on 06-01-2007, is now almost 14 years of age, who is residing with the respondent mother.

d) In paragraph No.18, the appellant makes a passing reference to the copy of the income tax returns for the financial years 2016-17 to 2020-21.

e) Even before the learned Family Court, the appellant consistently took a false stand that he was a labourer and it is only after the respondent wife brought details about his profession and annual income as well as immovable properties, that his act of suppressing the income and suppressing his profession was exposed.

f) The income from agriculture running into lakhs, was also brought before the learned Family Court by the wife, on the basis of 7/12 extracts.

g) The immovable properties purchased by the appellant were also exposed by the wife by producing the record.

h) The appellant filed an affidavit in lieu of examination-in-chief, Exhibit-47, before the learned Family Court and did not turn up for facing the cross examination.

i) Finally, an order was passed on 13-04-2018 recording that the affidavit in lieu of examination-in-chief would not be read in evidence as the appellant continuously avoided the cross examination.

j) From the income tax returns of the appellant, that were produced for the financial year 2011-12 till 2014-15, it was brought before the learned Family Court that the appellant had a huge income.

k) The learned Family Court relied upon the judgment delivered by the Hon'ble Supreme Court in **Rajnesh Vs. Neha** reported in **2020 SSC Online (Supreme Court) 903**, wherein the law has been settled that the husband as well as the wife will have to file specific affidavit in the Court to indicate their sources of income and the quantum of income. Since the appellant systematically avoided bringing these aspects before the Court and did not enable the wife to cross examine him on his affidavit in lieu of examination-in-chief, that the learned Family Court relied upon the income tax returns produced by the wife demonstrating the income of the husband and granted Rs.15,000/- each in favour of the wife and the girl child.

l) There was a mutual understanding arrived at before the learned Family Court in the execution proceeding bearing R.D. No. 32 of 2015 wherein the appellant husband agreed to purchase a 2-BHK flat, so as to enable the married couple and their daughter to live under one roof. The EMI of the loan amounts were to be paid by the appellant husband.

m) The wife is now receiving notices from the bank from which the loan was taken by the husband to purchase the flat, as he has shown her to be the person who would be re-paying the EMI. Even in the said agreement dated 05-08-2019, the learned appellant had agreed to hand over Rs.20,000/- to the wife on or before the 5th Day of the month or deposit the amount in her account, so as to spend for the family for each month.

n) After a short period together, it is alleged that the appellant drove out the wife alongwith their daughter and both are not living alongwith the appellant in the said flat.

o) He has stopped paying her the amount of Rs.20,000/- per month, as was agreed upon.

p) During the long litigation between the couple, the respondent wife had to file 19 execution proceedings for recovering the maintenance amounts.

4. The learned advocate for the appellant has relied upon

the following judgments :-

1) Judgment delivered by the Hon'ble Supreme Court in **Appeal (Crl.) No.1059 of 2003 [Deb Narayan Halder Vs. Smt. Anushree Halder]** on 26th August, 2003

2) Judgment delivered by the High Court of Bombay at Goa in **Criminal Revision Application No.60 of 2018 [Shri Vjayanand Dattaram Naik & Others Vs. Smt. Vishranti Vijayanand Naik and Another]** on 13th February, 2019.

3) Judgment delivered by the Madhya Pradesh High Court Principal Seat at Jabalpur in **Cr. R. No. 1904 of 2015 [Smt. Pooja Gaur Vs. Shri Umit Alias Pinky Patel]** on 26th April, 2016.

5. Having taken into account the submissions of the learned counsel and having gone through the voluminous appeal paper book, we are of the view that the appellant has attempted to mislead the learned Family Court by stating that he was a labourer. After the wife exposed him by placing before the Court few income tax returns indicating quite a large income by the appellant, running into couple of lakhs, that the learned Family Court realised that the appellant had attempted to suppress his profession as well as the source of income.

6. The appellant has placed before us Form No.3CD under Rule 6G(2), which is a statement of particulars required to be furnished under Section 44(AB) of the Income Tax Act, 1961. He

has also placed before us the trading account for the year ending 31-03-2020. Similar documents are placed before us to indicate that his income is going down, though we can see that he has shown large payments having been made to his father and his mother to lower his income.

7. What we can see from the conduct of the appellant, even before us, is that he has not placed before us a complete set of his annual assessment income tax returns so as to know his gross income from his profession for a particular year. It is quite obvious as regards the reason for doing so, since in the form No.3CD for the assessment year 2019-20, his gross profit turnover for the previous year was Rs.28,18,965/-. By showing large payments to parents and outsiders and as a part of business expenses, the taxable income is attempted to be reduced. Legal fees paid by him in the balance-sheet as on 31-03-2019 is Rs.1,99,500/-. The total amount granted by the learned Family Court to the wife and the 14 year old daughter is Rs.30,000/- per month, which would be Rs.3,60,000/- per year, which appears to be about 15% of the income that we can assess from the skeletal record placed by the appellant before us.

8. Be that as it may, what we find from the conduct of the petitioner is that he had made specific efforts, and probably

deliberately and intentionally, to suppress his profession and his gross income, even from this Court, despite the learned Family Court having come down heavily on him for the same conduct. It is said that the wife is litigating for monthly maintenance since 2015 and by the impugned judgment, the proceedings filed in the year 2015 were finally adjudicated on 27-01-2021 during which period the wife did not receive the regular maintenance from the appellant.

9. It is the case of the appellant that the wife is a practicing advocate. There is no dispute that when the respondent wife got married to the appellant she had passed her 12th Standard and after the birth of the child when the litigation began, she realised the need of improving her educational qualifications and finally she became an advocate. It requires no debate as regards the gestation period for an advocate to pick up practice and develop a sizable clientele. The respondent wife is said to be practicing in the District Court at Aurangabad.

10. In view of the above, the appellant admits that he is in arrears of payment of maintenance for an amount of almost Rs.18 lakhs.

11. In view of the above, we do not find that the impugned

judgment could be termed as perverse or erroneous. The evidence adduced by the wife has been duly considered. The appellant himself chose to evade cross examination and by doing so, he has damaged his own case. The malafides in his conduct as a litigant in Court is also exposed by his suppression of facts. The law laid down by the Hon'ble Supreme Court in **Bhaskar Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society & Ors.** reported in **(2013) 11 SCC 531** is squarely applicable to the case of the appellant. As such, this appeal is dismissed.

(S. G. MEHARE, J.) **(RAVINDRA V. GHUGE, J.)**

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