

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 SECOND APPEAL NO.569 OF 2019
WITH CA/12533/2019 IN SA/569/2019

RAMPRASAD BHAURAO KHAPRE

VERSUS

KUNTABAI W/O RAMPRASAD KHAPRE

...

Mr. V.P. Kadam, Advocate for the appellant

Mr. S.K. Chavan, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th AUGUST, 2021.

ORDER :

1 Heard learned Advocate Mr. V.P. Kadam for the appellant and learned Advocate Mr. S.K. Chavan for the sole respondent.

2 Present appeal has been filed by the original defendant-husband to challenge the Judgment and Decree passed in Regular Civil Appeal No.61/2014 by learned Principal District Judge, Parbhani on 20.07.2019, thereby partly allowing the appeal filed by the original plaintiff and enhancing the maintenance to the plaintiff by amount of Rs.2,000/- per month and also for creating a charge on the property of the defendant in

respect of the same. Present respondent-original plaintiff had filed Regular Civil Suit No.176/2013 before learned 7th Joint Civil Judge Junior Division, Parbhani for maintenance under Section 18 of the Hindu Adoption and Maintenance Act. It came to be decreed on 21.03.2014. The defendant was directed to pay maintenance @ Rs.2,000/- per month to the plaintiff towards maintenance from the date of the decree. Prayer of keeping charge of the same on the suit property was dismissed. It is important to be noted that the original defendant i.e. the present appellant had not filed appeal or cross-objection, when the original plaintiff filed the said Regular Civil Appeal No.61/2014. Under such circumstance, as regards the findings of the Lower Court that the plaintiff is entitled to get maintenance from the defendant is concerned, it need not be gone into and there is no question of substantial question of law arising in that respect.

3 The learned Advocate for the appellant has submitted that the appeal has been filed with a limited purpose. The Lower Court had granted maintenance @ Rs.2,000/- per month and the First Appellate Court further enhanced it by Rs.2,000/- per month, thereby maintenance that was granted was to the tune of Rs.4,000/- per month. The original plaintiff had filed proceedings under Section 125 of the Code of Criminal Procedure, 1973 to get maintenance and in that proceeding she is getting maintenance @

Rs.3,000/- per month. Due credit should be given to that amount and compared with the present appellant the figure ought to have been arrived at. It was correctly arrived by the learned Trial Judge, and therefore, the appellant had not filed any appeal before the First Appellate Court. However, the learned First Appellate Court without there being any ground and without taking into consideration the maintenance, the plaintiff is getting under another proceedings; the enhancement has been granted, which is wrong. He relied on the decision in **Rajnish vs. Neha and another, (2021) 2 SCC 324**. In this case the criterion for determining quantum of maintenance has been discussed. Section 23 of Hindu Adoption and Maintenance Act provides that while awarding maintenance the Court shall have due regard the criteria mentioned therein. Thereafter, after relying on **Sudeep Chaudhary vs. Radha Chaudhary, 1997 (11) SCC 287**, it has been held that adjustment in a case where the wife had filed an application under Section 125 of the Code of Criminal Procedure and under Hindu Marriage Act can be done. Further, when there is overlapping of jurisdictions of various authorities, it was held that the wife is under legal obligation to disclose the same in a subsequent proceeding, as to how much amount she is getting and to overcome the issue of overlapping jurisdiction, and avoiding conflicting orders being passed in different proceedings, Hon'ble Apex Court directed that in a subsequent maintenance proceeding, the applicant shall disclose the

previous maintenance proceedings and the orders passed therein.

4 Per contra, the learned Advocate appearing for the respondent-original plaintiff supported the reasons given by both the Courts below and submitted that both the Courts had given due regard to the maintenance amount which has been already awarded to the wife.

5 It is to be noted that while arriving at the quantum of maintenance @ Rs.2,000/- per month, the learned Trial Judge had taken a note of the fact that the plaintiff is getting amount of Rs.1,800/- from the defendant, under the orders passed under Section 125 of the Code of Criminal Procedure. Paragraph No.17 of the learned Lower Court's Judgment is dedicated towards adjusting the amount of maintenance already awarded. The First Appellate Court had also taken a note of the fact that the Trial Court awarded maintenance @ Rs.2,000/- per month and the plaintiff is already receiving the maintenance @ Rs.3,000/- per month in criminal proceedings. Yet, taking into consideration the hike in the prices of essential commodities and the defendant having sufficient means, it had not proceeded for separate maintenance, the enhancement is granted. Therefore, when after perusal of the fact that the plaintiff is already getting maintenance under different proceedings; yet, further enhancement can be granted, taking into consideration the hike in the prices of essential commodities and other

surrounding circumstances. The decision has been arrived at, it need not be disturbed. Even if we add amount of Rs.3,000/- under Code of Criminal Procedure and present Rs.4,000/-, the amount that would be received by the plaintiff towards maintenance in all would be Rs.7,000/- per month. The defendant i.e. present appellant has not stated, as to how much is his income. He is an agriculturist and it was brought on record that through 7/12 extract Exhs.20 to 23 that he has lands admeasuring 42 R, 82 R, 47 R and Gat No.50 to the extent of 02 H 98 R are with the defendant. Nobody else can be said to be depended on him, and therefore, the amount awarded cannot be said to be excessive. The wife is also having right to live with dignity and be in a position equivalent to the husband. The said enhancement appears to be justified. No substantial questions of law are arising in this case. The Second Appeal deserves to be dismissed. Accordingly, it is dismissed. Civil Application No.12533 of 2019 for stay stands dismissed.

(Smt. Vibha Kankanwadi, J.)