

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

FAMILY COURT APPEAL NO. 39 OF 2017

Prabhakar s/o Nagorao Wankhede,
Aged about 52 years, Occ: Helper, in
S.E. Railway, R/o C/o Sectiona Engineer
S.E. Railway, M.I.B. Office & Workshop,
Sr. Section Engineer Office,
Belly Shop, Motibagh, Nagpur.

.... **APPELLANT**

// **VERSUS** //

Jijabai w/o Prabhakar Wankhede,
Aged about 47 yrs, Occ : Household,
R/o Dhammadeep Nagar, Near Vishwa
Shanti Boudha Vihar, Binaki Layout,
Nagpur, **Presently residing at**
Quarter No. 522, Galli No.2,
Near Fabrication Shop MAHADA Colony,
Nari Road, Nagpur.

.... **RESPONDENT**

Shri. D.A. Sonwane, Advocate for appellant.

CORAM : **A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.**
DATE : **03/02/2021.**

ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]

1. This appeal was called out for final hearing yesterday. The learned counsel for the appellant was present, however none appeared for the respondent. After hearing the learned counsel for the appellant for some time, the matter was adjourned for today. However, even today none appears for the respondent.

2. This appeal is filed by the appellant-husband under Section 19 of the Family Courts Act, 1984 challenging the judgment dated 02/09/2016 in Petition No. C-40/2014 passed by the learned Family Court No.3, Nagpur, thereby allowing the petition of the respondent-wife filed under Sections 18(1)(2)(a),(b),(e) of the Hindu Adoptions and Maintenance Act, 1956 thereby granting maintenance @ Rs.12,000/- per month to the respondent-wife.

3. Facts in brief are that the respondent filed petition seeking maintenance contending that her marriage with the appellant was solemnized on 01/06/1985 at Waghoda, Tah. Saoner, District Nagpur as per the Hindu rites and customs. The appellant was serving in South Eastern Central Railway Workshop. Out of the wedlock, two male children namely Praful and Pravin and two female children namely Ranjana and Nita were born. At the time of filing of the maintenance petition both the daughters were married. However Ranjana was widow. The elder son Pravin was staying with the respondent/mother, whereas, the younger son Praful was staying with the appellant/father. It was alleged in the petition that the appellant meted out physical and mental cruelty towards the respondent. The appellant was addicted to drinking and was a

womanizer. Though the respondent tried to convince him not to indulge in such acts, he did not listen to her. He even had an extra marital affair and used to spend maximum period of his life with the lady whose name was disclosed in the petition. The appellant used to mercilessly beat respondent under the influence of liquor. On 17/03/2014 the appellant under the influence of liquor abused the respondent and refused to sever his illicit relations. He also threatened to kill the respondent. Hence the respondent was constrained to file a complaint against him which was registered as NCR No. 227 of 2014 with Yashodhra Nagar Police Station. The respondent further averred that the appellant was working as a Helper in South Eastern Central Railway and was drawing salary of Rs. 35,000/- per month. In spite of having sufficient means he neglected and refused to provide maintenance to the respondent. The respondent was deserted for a period of more than seven years. She therefore claimed maintenance @ Rs. 20,000/- per month.

4. The appellant by filing a written statement denied all the allegations of the respondent and resisted her claim for maintenance. The appellant claimed that he has performed marriages of his both the daughters and it was the respondent who

was guilty of desertion. He had never ill-treated her. It was further claimed that respondent used to threaten the appellant that he would be implicated in false criminal cases. He claimed that he was working as a Helper in South Eastern Central Railway, Nagpur and his carry home salary was Rs. 16,470/- per month. For performing the marriage of his two daughters he obtained loan of Rs. 3,00,000/- from his friends. He also had to incur expenditure for construction of his house. He had to maintain the younger son who was taking education and also his old aged mother. He was required to deposit Rs. 3,000/- per month in L.I.C. He stated that he was ready to maintain the respondent and he was willing to cohabit with her.

5. Before the Family Court the respondent filed her affidavit in lieu of evidence reiterating the contentions in the petition. Though she was cross examined, nothing damaging to her case could be brought on record during the cross examination.

6. On behalf of the respondent daughter Nita was examined as PW 2. She supported the case of the respondent stating that the appellant was a habitual drinker and he had an extra marital relationship. She also stated in her evidence that the

appellant used to beat the respondent under the influence of liquor and he was not providing any money for day to day expenses. When the extra marital affair of the appellant was disclosed to the respondent and family members, the ill-treatment of the respondent at the behest of appellant started. In the cross examination she reiterated the allegations of cruelty meted out to her mother by the appellant. Her evidence could not be shattered in the cross-examination.

7. The appellant filed his affidavit in lieu of evidence reiterating the contentions in the written statement. He admitted that his salary was attached towards payment of interim maintenance @ Rs. 5,000/-per month. He further admitted that his take home salary was Rs. 17,000/- per month. He also produced the salary slip for the month of March-2016 (Exh.33) and the salary certificate for April- 2016 (Exh.34). He admitted to have received bonus of Rs. 8,356/- for Diwali. He however denied the suggestions to the effect that he ill-treated the respondent and that he was in a position to pay maintenance @ Rs. 20,000/- per month.

8. The learned Judge of the Family Court after appreciating the evidence on record awarded maintenance @ Rs. 12,000/- per month to the respondent. The same is challenged by the appellant-husband.

9. The learned counsel for the appellant vehemently argued that the take home salary of the appellant was Rs.13,816/- and the learned Family Court has committed an error in awarding Rs.12,000/- maintenance to the respondent. According to him the learned Family Court has misstated and mis-concluded the evidence on record and has granted an exorbitant amount of maintenance. He further submitted that the respondent was guilty of deserting the appellant as she on her own accord had left the appellant and therefore, she was not entitled for maintenance

10. None appears for the respondent-wife. We have gone through the record. After hearing the learned counsel for the appellant and after going through the record following point arises for determination.

“Whether the learned Family Court was justified in allowing the petition and awarding maintenance @ Rs.12,000/- per month to the respondent ?”

11. The marriage is not in dispute so also the birth of the children. It is also an admitted position on record that since 2007 the appellant and the respondent are residing separately. The respondent has proved on record that it was because of the ill-treatment at the hands of appellant that she was required to leave the matrimonial house. PW.2 daughter Nita has also supported the allegations of ill-treatment to the respondent by the appellant. It is also an admitted position on record that since 2007 the appellant has not taken care of and/or maintained the respondent. Thus the respondent has proved neglect and refusal on the part of the appellant. The learned Family Court, according to us, was justified in coming to the conclusion that there was a reasonable ground for the respondent to stay separately from her husband and she was entitled to claim maintenance.

12. The appellant has produced on record his salary slip at Exh.33 for the month of March 2016. The salary slip shows that the gross salary of the appellant is Rs.33,433/- and there were

deductions of Rs.14,933/-. The net pay of the appellant was Rs.18,500/-. The deduction of Rs.5,000/- was towards payment of interim maintenance of the respondent, loan installment Rs.7,845/- are being deducted and the other deductions are permissible deductions.

13. As on that date his take home salary was Rs.17,000/- per month. The deductions which were being claimed by the appellant from his salary were not permissible deductions and the learned Family Court has rightly held that the deductions towards loan of Rs.7,845/- can not be considered while deciding the amount of maintenance. The learned Family Court was also justified in holding that the voluntary provident fund deduction of Rs.4,000/- was also not permissible to be considered. The learned Family Court was however not justified in awarding maintenance @ Rs.12,000/- per month to the wife without assigning any reason.

14. At the time of admitting this appeal, on 11/09/2017 the appellant was directed to pay maintenance @ Rs.6000/- per month to the respondent, at that time the mother of the appellant was alive. She is no more now. Taking into consideration the evidence

placed on record, the salary of the appellant and the social status of the appellant and the respondent, we are of the view that maintenance @ Rs10,000/- per month would meet the ends of justice. The point is answered accordingly. Hence we pass the following order:

(i) The decision of the Family Court, Nagpur in Petition No.C-40/2014 is partly modified to the effect that the appellant is directed to pay an amount of Rs.10,000/- per month to the respondent from the date of passing of Family Courts order dated 02/09/2016.

(ii) The appellant shall clear the arrears of maintenance within a period of four months from today.

(iii) In the facts, the parties to bear their own costs.

JUDGE

JUDGE