

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FAMILY COURT APPEAL NO. 45 OF 2016

Rajesh s/o Motiramji Gaikwad,
aged about 50 years, Occ. Nil,
R/o 6/1, Rambag Colony,
Medical Square, Nagpur.

...APPELLANT

Versus

Yogita w/o Rajesh Gaikwad,
aged about 38 years,
Occ. Business Pallai Super Shoppee,
R/o Manish Nagar, Besa Road,
Nagpur.

...RESPONDENT

Shri J.M. Shamkuwar, Advocate for the appellant.
Shri A.K. Choube, Advocate for the respondent.

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**CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.**

ARGUMENTS WERE HEARD ON : MARCH 04, 2021.

JUDGMENT IS PRONOUNCED ON : MARCH 08, 2021.

JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

This is the husband's appeal filed under Section 19 of the Family Courts Act, 1984 (hereafter "Act of 1984", for short) challenging the judgment and decree dated 28/07/2015 passed by the Family Court – 2, Nagpur in Petition No. C-

86/2010, which was filed under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (hereafter “the Act of 1956”, for short) for the grant of maintenance.

The brief facts necessary to decide the present appeal are as under :

2. The marriage between the parties was solemnized on 28/02/2002 at Nagpur as per the custom prevailing in their community. Out of this wedlock, they are blessed with two sons, viz., Mihir and Chirag, born on 27/11/2002 and 02/12/2006 respectively, who are presently in the custody of the appellant/ husband. The couple is residing separately since 2010.

3. The respondent/ wife filed three petitions before the Family Court, Nagpur ;

i) Petition No. D-19/2020 under Section 25 of the Guardians and Wards Act, 1890, for custody of the children;

ii) Petition No. C-86/2010 under Section 18 of the Act of 1956 for maintenance of Rs. 20,000/- (rupees twenty thousand) per month and ;

iii) Petition No. E-356/2010 under Section 125 of the Code of Criminal Procedure, 1973 (hereafter “the Code”, for short) for maintenance of Rs. 1500/- (rupees one thousand five hundred) per month.

All the three petitions were tried together, and by way of a common judgment and decree dated 28/07/2015, the Family Court – 2, Nagpur, partly allowed Petition No. D-19/2010 for custody and Petition No. C-86/2010 for maintenance and granted amount of Rs.4,000/- (rupees four thousand) per month to the respondent/ wife against her claim of Rs.20,000/- (rupees twenty thousand) per month. The Family Court preferred not to consider the Petition No. E-356/2010 for maintenance under Section 125 of the Code, as it considered the petition under Section 18 of the Act of 1956 for her maintenance.

The appellant/ husband only challenged the quantum of maintenance to the respondent/ wife in this appeal.

4. We have heard Shri Shamkuwar, learned Counsel for the appellant/ husband, and Shri Choube, learned Counsel for the respondent/ wife. Perused the record. The following point arises for our consideration :

“Whether the maintenance amount of Rs.4,000/- per month is just and reasonable ?”

5. At the outset, needless to say that during the pendency of this appeal, while staying the effect and operation of the judgment and decree of the Family Court, this Court allowed interim maintenance @ Rs.2,500/- (rupees two thousand five hundred) per month to the respondent/ wife.

6. It is not disputed that the couple is residing separately since 2010, and both the sons are in the custody of

the appellant/ husband since the time of their separation. There is nothing on record about the proof of income of the appellant/ husband. On the basis of guess work, the trial Court decided the maintenance amount @ Rs.4,000/- (rupees four thousand) per month. It is evident from the record of the trial Court that the respondent/ wife has no source of income, and therefore, the custody of the children was not granted to her. Shri Shamkuwar, learned Counsel for the appellant/ husband brought to the notice of this Court some photographs showing one lady sitting on the counter of a daily needs shop, purported to be his wife. However, he could not show that the shop is owned by the respondent/ wife, and further details about the said shop. Shri Choube, learned Counsel for the respondent/ wife stated that the shop is owned by her relative. The appellant/ husband has not brought on record his true income. Evidently, he is working as a representative of the film distributors, and prior to that, he had also worked as a real estate broker and as a share broker. As per his case, he is earning Rs.10,000/- (rupees ten thousand) per month. However, he could not prove the same.

7. In the absence of proof of income of the appellant/ husband, we do not see any impropriety, if the trial Court decided the amount of maintenance on the basis of some guess work. Some amount of guess work is permissible in law. However, considering the facts that the appellant/ husband is having responsibility to maintain his two sons and an old aged mother, in our considered opinion, Rs.3000/- (rupees three thousand) per month towards maintenance for the respondent/ wife, would be just and reasonable. The Family Court allowed the maintenance amount from the date of judgment. Had it been the appeal/ cross objection preferred by the respondent/ wife, we would have considered the grant of maintenance from the date of application. Furthermore, it emerges from the record that during pendency of the petition before the Family Court, she was receiving interim maintenance of Rs.1,000/- (rupees one thousand) per month by an order dated 09/05/2011.

8. In the result, we modify the order of the Family Court accordingly and pass the following order :

ORDER

- i. The appeal is allowed in part.
- ii. The judgment and decree of the Family Court is modified to the extent that the respondent/ wife shall be entitled to receive maintenance @ Rs.3000/- (rupees three thousand) per month from the date of order of the Family Court.
- iii. It is informed that the appellant/ husband has not paid maintenance amount to the respondent/ wife since March-2020. We, therefore, direct the appellant/ husband to deposit the arrears of maintenance within a period of three months from today.
- iv. In the circumstances, the parties to bear their own costs.

JUDGE**JUDGE**

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