

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

FAMILY COURT APPEAL NO.61 OF 2015

Sau. Asha w/o Ashok Nale,
Aged about 51 years,
Occupation-Nil,
R/o. 37, Shramik Hindusthan Colony,
Wardha Road, Nagpur. .. Appellant

.. Versus ..

Ashok Sitaram Nale,
Aged about 54 years,
Occupation-Service,
R/o.1060 NE Park edge Circle,
Hills Boro OR 97124 (U.S.A.) .. Respondent

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Shri R.M. Kinkhede, Advocate for the appellant,
None for the respondent though served.

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CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

DATED : 19.01.2021

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

1. This appeal filed by the appellant-wife under Section 19 of the Family Courts Act, 1984 takes exception to the judgment and decree passed by the learned Family Court in Petition No.C-67/2011, to the extent it awards maintenance from the date of order, which

according to the appellant-wife, should have been awarded from the date of the petition.

2. The Appellant-wife filed petition under Section 18 of the Hindu Adoption and Maintenance Act, 1956 against the respondent-husband claiming Rs.2 Lakh per month towards the maintenance for herself and for her son and Rs.3,60,000/- towards educational expenses to son. The learned Family Court allowed the petition by directing the respondent-husband to pay an amount of Rs.50,000/- per month each to the appellant-wife and son from the date of order. The respondent-husband was further directed to pay an amount of Rs.3,60,000/- towards educational expenses of son. The appellant-wife, being aggrieved by the direction to pay the maintenance from the date of order, has filed the present appeal.

3. Though served, the respondent-husband has chosen not to file appearance.

4. The learned Advocate for the appellant-wife submitted that the Family Court was not justified in awarding maintenance from the date of order. Without there being any justifiable reason, the Family Court has deviated from the normal practice of awarding maintenance from the date of filing of the petition. He relied upon

the ratio in **Rajnesh .vs. Neha and another, 2020 SCC OnLine SC 903** to submit that the Family Court Appeal is liable to be allowed by awarding maintenance from the date of the petition.

5. Upon hearing the learned Advocate for the appellant-wife, following point arises for consideration :

“Whether the Family Court was justified in directing the payment of maintenance from the date of order. ?

6. Heard the learned advocate for the appellant and perused the record. The Family Court has recorded a finding that the respondent-husband had treated the wife cruelly and deserted her on 24.10.2011 and in spite of having sufficient means has refused and neglected to maintain the wife and son. The petition for maintenance was filed by the wife on 8.11.2011 and the same was decided on 5.3.2015. It does not appear from the record that the appellant was guilty of prolonging the matter. The Family Court, without assigning any reason, directed the payment of maintenance from the date of order. The learned advocate for the appellant was right in placing reliance in the ratio in **Rajnesh** (supra) wherein the Hon’ble Supreme Court has laid down the guidelines in the maintenance cases. It would be apt to reproduce the relevant observations here :

“75. Even though a judicial discretion is conferred upon the Court to grant maintenance either from the

date of application or from the date of the order in S. 125 (2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.”

VI Final Direction :

81. In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

- (a)
- (b)
- (c)
- (d) Date from which maintenance is to be awarded.

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

- (e)

7. Taking into consideration the fact that the appellant-wife was not responsible for the delay caused in disposal of her maintenance petition filed in the year 2011 which was decided in the year 2015, we are of the considered view that the Family Court was not justified in directing the payment of maintenance from the date of order. The point is answered accordingly .

8. In view of the reasons stated above and the authoritative pronouncement of the Hon'ble Supreme Court in **Rajnish** (supra), the Family Court Appeal deserves to be allowed and the same is allowed by modifying the order passed by the Family Court in Petition No.C-67/2011 to the effect that the maintenance of Rs.50,000/- each per month awarded to the wife and son shall be payable from the date of filing of the petition i.e. from 8.11.2011. Decree be drawn up accordingly. Family Court Appeal is allowed in the aforesaid terms. Parties to bear their own costs.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)