

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

FAMILY COURT APPEAL NO. 33 OF 2015

Dr. Pradeep Ramteke,
 Aged about 45 years, Occ. Medical
 Practitioner,
 Address No.1 : R/o. Near Office of
 Shiv Sena, I/F. House of Suresh
 Kalpande, Balaji Nagar, MIDC
 Hingna, Tah. and Hingna, Distt.
 Nagpur.
 Address No.2 : R/o. Near house of
 Gawande, Malipura, Jani
 Shukkarwari, Nagpur.

.... **APPELLANT**

// **VERSUS** //

- 1] Smt. Suchita w/o Dr. Pradeep
Ramteke,
- 2] Ku. Priyanka d/o Dr. Pradeep
Ramteke,
Both R/o. C/o. Sami Ullah Kha
Pahan Ajija Begum, Killa Mata
Mandir, Near Kathiwale Babaki
Dargah, Killa Road, Mahal,
Nagpur.

.... **RESPONDENT**

 Shri. S.D. Khati, Advocate for appellant.
 Shri M.P. Kariya, Advocate for respondents.

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

JUDGMENT: [PER: A.S. CHANDURKAR, J.]

The challenge raised in the present proceedings is to the judgment of the Family Court dated 19/05/2014 in Petition No.C-62 of 2007.

2. The respondent no.1 herein claims to be the legally wedded wife of the appellant. According to her, the marriage took place on 20/07/1993 at Anand Mangal Karyalaya, Dhantoli, Nagpur. From the said wedlock the respondent no.1-wife gave birth to a child on 19/09/1994. It is the case of the respondent no.1 that on 07/07/1994, the appellant left her company and thereafter performed another marriage. Since February, 1995, the appellant did not take care of the respondents and hence in 1996, the respondents filed proceedings under Section 18 of the Hindu Adoption and Maintenance Act, 1956, (for short “the Act of 1956”) seeking maintenance of an amount of Rs.3000/- per month for both of them.

3. In the written statement filed by the appellant, the marriage was specifically denied. A stand was taken that the respondent no.1 professed Muslim religion and therefore she was

not entitled to claim maintenance under Section 18 of the Act of 1956. All other adverse allegations as made were also denied.

4. After the parties led evidence the trial Court by its judgment dated 25/09/2000 held the respondent entitled to claim maintenance. Being aggrieved by that order the appellant had filed C.R.A. No. 993 of 2000 in this Court which was decided on 24/11/2004. By the said judgment, the order passed by the trial Court was set aside and the proceedings were remanded to the trial Court for fresh adjudication with liberty to the parties to lead fresh evidence.

5. After remand the respondent no.1 examined herself and two witnesses. The appellant did not lead any further evidence. Thereafter, the Family Court by the impugned judgment held the respondents entitled to receive maintenance at the rate of Rs.3000/- each per month from the date of filing of the proceedings. Being aggrieved the appellant-husband has challenged the aforesaid judgment.

6. Shri S.D. Khati, learned counsel for the appellant submitted that while remanding the proceedings this Court has observed that the respondent no.1 was required to prove that she was entitled to claim maintenance under the provisions of the Act of 1956. It was the specific case of the appellant that the respondent no.1 was Mohammedan by birth and therefore she was not entitled to invoke the jurisdiction under Section 18 of the Act of 1956. He referred to the order passed in C.R.A. No. 993 of 2000 and thereafter submitted that the evidence on record after remand was not sufficient to confer jurisdiction on the Family Court to entertain the proceedings. Since it was clear that the respondent no.1 was not converted from Muslim religion, she was not entitled to be granted any maintenance. Without prejudice to the aforesaid it was submitted that the amount of maintenance granted is on a higher side and the earning of the appellant was not of such nature to sustain the order of grant of maintenance. On this count it was submitted that the impugned judgment was liable to be set aside.

7. Shri M.P. Kariya, learned counsel for the respondents on the other hand submitted that after remand the respondent no.1 examined herself and other witnesses. It was specifically stated that

the respondent no.1 before her marriage had got herself converted to Bouddha religion. He submitted that there was no cross-examination on these material aspects and therefore the Family Court did not commit any error in holding that it had jurisdiction to entertain the proceedings. The other witnesses examined also supported the case of the respondent no.1. Moreover, the income of the appellant was more than Rs.15,000/- per month and in the light of the fact that the respondent no.2 was his daughter the amount of maintenance granted was reasonable. He therefore submitted that appeal was liable to be dismissed.

8. In the light of aforesaid submissions, the following points arise for adjudication:

- i) Whether the Family Court was legally correct in awarding maintenance to the respondents?
- ii) Whether the order passed by the Family Court deserves to be interfered with?

9. We have heard the learned counsel for the parties at length and we have perused the records of the case. It is not in dispute that pursuant to the order dated 24/11/2004 in C.R.A.

No.993 of 2000, the proceedings were remanded for fresh adjudication. After remand the respondent no.1 filed her affidavit at Exhibit-18 and contended that her marriage took place on 12/06/1993 which marriage was thereafter registered on 28/07/1993. She further stated that from the said marriage the respondent no.2 was born. In her evidence the memorandum of registration of marriage was exhibited as Exhibit-24 and the birth report of respondent no.2 was marked as Exhibit-25. The respondent no.1 examined another witness at Exhibit-38 who was the wife of one Munir Ahamad. This witness stated that respondent no.1 was not married with Munir Khan. Yet another witness was examined at Exhibit-39. The said witness was the elder sister of respondent no.1 and she relied upon the document at Exhibits-40 and 41. The appellant did not lead any evidence.

10. On perusal of these documents, we find that the memorandum of marriage refers to the name of the respondent no.1 as Ajija Pathan. However, the birth report at Exhibit-25 issued by the Nagpur Municipal Corporation indicates the name of the appellant as the father of the child born on 19/09/1994 and the name of respondent no.1 is shown as Mrs. Suchita P Ramteke. The other

document includes the progress card of the respondent no.2 and name of the appellant is shown as the father.

11. It was vehemently urged on behalf of the appellant that Exhibit-24 which is the memorandum of marriage clearly indicates that the respondent no.1 had not been converted to Bouddha religion. It was for this purpose that the proceedings were remanded. It would therefore be necessary to consider the reason for remand of the proceedings by virtue of the order passed in C.R.A. No.993 of 2000. The memorandum of marriage as well as the birth extract of respondent no.2 were already on record of the trial Court. This is also clear from the observations in paragraph no.13 of that judgment. In paragraph no.17, this Court observed as under:

“17. Thus, from the judgment of learned Trial Court and from the evidence on record, it is clear that there is no actual evidence adducted on record by the respondent no.1 and her conversion to Hindu religion (Boudha) to enable her to claim maintenance from her alleged husband under section 18 of Hindu Adoption and Maintenance Act, 1956. The learned trial Court has also not considered the entire material available before it. Even if it is presumed that respondent no.1 and revision applicant were staying together, that will not prove the conversion of respondent no.1 from Mohammeden to Hindu. The Imam of Killa Masjid has deposed about the subsequent marriage of respondent no.1 with Moonir

Ahmad on 16/6/1993 and in that marriage, she has used her Mohammaden name i.e. Ajijabegum.”

12. The aforesaid observations therefore clearly indicate that with a view to grant an opportunity to the respondent no.1 to adduce evidence about her conversion to Bouddha religion, the proceedings were remanded. After remand the affidavit at Exhibit-18 filed by the respondent no.1 clearly states that she had embraced Bouddha religion and had married the appellant. Except this statement nothing further has been stated. Though the learned counsel for the respondents submitted that there was no cross-examination on this material aspect we find that the initial burden to prove the conversion was on the respondent no.1 and it is for that purpose that the proceedings had been remanded. The deposition of other witnesses is also silent on the aspect of conversion. The learned Judge of the Family Court in paragraph no.14 of the impugned order has clearly observed that it was difficult for the respondent no.1 to have documentary evidence about her conversion to Bouddha religion. While making such observation, learned Judge of the trial Court lost sight of earlier order of remand that was passed in C.R.A. No.993 of 2000. We find that despite

granting opportunity to the respondent no.1 to lead evidence about her conversion, she has failed to do so. The learned Judge of the trial Court therefore was not justified in holding that the respondent no.1 was entitled to claim maintenance under the Act of 1956 by virtue of her conversion to Bouddha religion. The provisions of Section 2 of the Act of 1956 preclude a person who does not profess to be a Hindu by religion or Buddhist, Jaina or Sikh to invoke jurisdiction under the Act of 1956. Since the respondent no.1 has failed to prove that she was converted from Mohammedan religion to Bouddha religion she would not be entitled to invoke jurisdiction under Section 18 of the Act of 1956 for herself.

13. At the same time, it cannot be lost sight of that though the appellant sought to challenge the paternity of respondent no.2, he failed to substantiate the same. On the contrary, the document at Exhibit-25 clearly refers to the appellant as the father of respondent no.2. The minor daughter therefore would be a dependent of the appellant under Section 21 of the Act of 1956. To that extent the judgment of the Family Court granting maintenance to the respondent no.2 is liable to be maintained. The points as framed are answered accordingly.

14. In the light of aforesaid discussion the judgment of the Family Court in Petition No.C-62 of 2007 is modified. The order granting maintenance to the respondent no.1 at the rate of Rs.3000/- per month shall cease to operate from 01/02/2021. The respondent no.2 would be entitled to continue to receive maintenance at the rate of Rs.3000/- per month in accordance with the impugned judgment.

15. It is clarified that observations made in this judgment are only for deciding the entitlement of the respondents to the grant of maintenance. The respondent no.1 is free to take further steps to secure her interests in accordance with law. The Family Court Appeal is partly allowed in above terms. Parties to bear their own costs.

JUDGE

JUDGE