

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

FAMILY COURT APPEAL NO. 75 OF 2015

Vijay s/o Baldeo Bhise
Aged about 59 yrs, Occ. Retired,
R/o : Gokul Colony, Jawahar Nagar,
Akola, District - Akola

.... **APPELLANT**

// **VERSUS** //

Mrs. Shubha w/o Vijay Bhise,
Aged about 56 yrs, Occ. Pvt.
Tutorial classes, R/o – Plot No.177,
Shastri Layout, Nagpur,
C/o – Nitin Deshkar

.... **RESPONDENT**

Shri. A. Dhawas, Advocate for appellant.
Shri R.D. Bhuibhar, Advocate for respondent.

CORAM : **A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.**
DATE : **15th JANUARY, 2021.**

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

1. The husband, by filing the present appeal under Section 19 of the Family Courts Act, 1984 assails the judgment of Family Court, Nagpur in Petition No. C-77 of 2012, whereby the Family Court awarded maintenance to the respondent wife.

2. Facts in brief are that the respondent/wife filed a petition under Section 18 r/w Section 25 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act of 1956') seeking past, present and future maintenance, residential allowance, food expenses, contending that marriage of appellant-Vijay and respondent-Shubha was solemnized on 05/05/1986 (hereinafter referred as "the husband" and "the wife", respectively) as per Hindu Rites and Rituals. Daughter Anuja was born out of the wedlock on 13/11/1987. At the time of marriage, the wife was serving as a Lecturer in Fulsingh Naik College, Pusad and the husband was working as a Lecturer in Shri Shivaji College of Arts, Commerce and Science, Akola. The wife was, therefore, residing with her parents at Pusad and the husband was residing with his parents at Akola. The wife used to visit Akola to reside with the husband on several occasions and during holidays. The wife, out of her own income, purchased a plot at Akola in the joint name with the husband. On the insistence and pressure of the husband, the wife executed Transfer Deed of the said plot in favour of the husband. The wife in that behalf filed Criminal Case No.35 of 1996 in the Court of learned Judicial Magistrate, First Class, Akola against the husband for the offences punishable under Sections 420, 406 of the Indian Penal

Code, which resulted in acquittal by giving benefit of doubt. Though the husband was working as a Lecturer and earning handsome salary, he used to demand money from the wife and the wife used to virtually hand over all the salary to him. On the insistence and pressure of the husband, the wife resigned from her job in the month of August 1991 and shifted to Akola to reside with the husband. The husband and his parents started ill-treating the wife and her daughter as soon as they started residing with them. On 07/02/1993, the wife was beaten mercilessly as she refused to give consent for divorce by mutual consent, fist blows were inflicted on her and by snatching her Mangalsutra the wife was driven out of matrimonial house alongwith daughter.

3. The wife gave details of proceedings filed by her against the husband i.e. under Section 498-A of the Indian Penal Code i.e. Regular Criminal Case No. 475 of 1993 and private complaint i.e. Regular Criminal Case No. 1178 of 1993 which resulted into acquittal of the husband. Special Civil Suit No. 22 of 1996 for recovery of ornaments and 'Stridhan' articles, gifts which was partly decreed and the husband was directed to deliver silver and gold ornaments and articles to the wife or in the alternative to pay an

amount of Rs.61,900/-. Regular Civil Suit No. 444 of 1999 for maintenance wherein on 09/07/2001 maintenance at the rate of Rs.1,500/- per month to wife and Rs.500/- per month to the daughter for past three years was awarded and future maintenance at the rate of Rs.1,500/- per month to wife and Rs.1,000/- per month to daughter was awarded. Miscellaneous Criminal Case No. 269 of 1997 filed under Section 125 of Code of Criminal Procedure wherein maintenance at the rate of Rs.450/- per month each was awarded to wife and daughter. In Miscellaneous Criminal Case No. 555 of 1999 filed under Section 127 of Code of Criminal Procedure, the maintenance was enhanced to Rs.1,000/- each per month. Daughter Anuja filed petition for maintenance under Section 20 read with Section 25 of the Act of 1956, wherein educational expences of Rs.1,00,000/- and maintenance at the rate of Rs.3,000/- per month was awarded. The quantum was challenged by Anuja by filing First Appeal No. 43 of 2010 which was compromised and the husband agreed to pay Rs.1,85,000/- towards educational expenses and Rs.4,000/- per month towards maintenance allowance.

4. It was further averred that since the daughter had secured admission in B.E. course at Nagpur, the wife shifted to

Nagpur along with her daughter in July 2005 and since July 2005 till May 2010 they resided in the house owned by one Mrs. Nimgade at Income Tax Colony, Pratap Nagar, Nagpur by paying Rs.4,000/- per month rent. Between June 2010 till May 2012, the wife resided in the flat owned by Shri Raosaheb Chithore at Surve Nagar, Nagpur by paying rent at the rate of Rs.5,000/- per month. Since June 2012, the wife was residing at plot No.177, Shastri Layout, Nagpur owned by Shri Nitin Deshkar wherein she was paying rent at the rate of Rs.6,800/- per month (excluding electricity charges). Electricity charges of Rs.800/- per month were being paid by her. The wife therefore claimed that since December 2009 till the date of filing the petition, she had paid Rs.1,74,400/- towards rent.

It was further contended that since December 2012, the wife was suffering from abdominal pain and severe pain in neck, stiffness and pain in left leg, pain in left knee etc. and she was advised to undergo various tests like X-ray of Cervical spine, MRI, Sonography, Doppler Study of Left leg, X-ray of Left knee etc. The wife, therefore, claimed that she had incurred expenditure of Rs.26,000/- towards doctor's fees, medical investigation charges and for medicines. The wife gave list of the medicines prescribed to her along with its price in the petition. The details of monthly expenses

to the tune of Rs. 8000/- incurred by her towards grocery, vegetables, milk, conveyance etc. was claimed by her as food expences. She further claimed that since daughter Anuja after completion of her engineering had secured admission in M.B.A. in Lokmanya Tilak Pune University, Nagpur in August 2012, the wife and daughter were required to stay at Nagpur. It was further contended that though the wife and daughter were residing separately from the husband since 07/02/1993, the husband had never made any provision for residence of the wife, she was unable to bear the expenses required towards residence at Nagpur and the wife and daughter were solely dependant on the husband for their maintenance. She therefore, contended that taking into consideration the fact that the husband earned salary of Rs.55,000/- per month and his father was a pensioner, hence nobody was dependent on him except the wife and daughter. Considering the share of the husband in the ancestral agricultural land, he owned a flat and an open plot and taking into consideration the status of the parties, the husband was in a position to pay maintenance at the rate of Rs.17,500/-(Rs.8,000/- towards residential allowance + Rs.8,000/- for food expenses + Rs.1,500/- towards medical attendance). The wife further claimed an amount of Rs. 1,74,400/-

towards past residence allowance, Rs.26,000/- towards past medical attendance and Rs.25,000/- towards litigation expences.

5. The husband filed written statement and admitted the marriage and the birth of the daughter, however denied rest of the contentions of the wife. He claimed that since past and future maintenance was granted to the wife in suit bearing No.444 of 1999 the petition of the wife was not maintainable. He claimed that the wife and her daughter were residing separately at Nagpur on their own accord, without there being any reasonable excuse. He pleaded that the separate residence of wife in such a costly rented house was not justified and that the claim of wife was time barred. There was no material change in the circumstances for the wife to institute the present petition. He claimed that house wherein he stayed required yearly maintenance and he had to pay the electricity bill and the tax of Municipal Corporation. The land which was in his share was not being cultivated by him. He did not get any income from the same. He therefore, claimed that the petition filed by the wife was liable to be dismissed.

6. Before the Family Court, the wife filed an affidavit of evidence reiterating her pleadings in the petition, she filed on

record her saving bank account statements, for the period 18/12/2009 to 20/05/2010 and for the period 12/10/2012 to 14/07/2014, 24 rent receipts, 45 medical bills, 13 bills of food and other expenses, salary certificate of the husband. She also filed on record certified copies of sale-deeds by which the husband and his mother sold lands belonging to them, 7/12 extract of lands in the name of the husband and his father. Her medical reports and prescriptions were also filed on record which were exhibited.

7. In the cross examination she accepted that she did not issue any notice in writing to the husband for enhancement of maintenance. She denied the suggestion that she was running coaching classes and earning Rs.50,000/- per month. She admitted that till the year 2009 there was a Maruti four wheeler in her name. She denied that at the time of deposition she was getting income of Rs.15,000/- per month from that vehicle. She further stated that the vehicle was owned by her father and after his death she inherited it and thereafter she transferred it for want of money. She admitted that she was aware that the husband would retire in December, 2014. She denied that after retirement the husband would be getting pension of Rs.20,000/- per month. She stated that the

husband would be getting pension at the rate of Rs.35,000/- per month.

8. Landlord Raosaheb Chithore, was examined on behalf of the wife who deposed that the wife was staying along with daughter at the first floor of the house owned by him at Surve Nagar by paying rent of Rs.5,000/- per month, between June 2010 till May 2012. In cross-examination, he admitted that he did not file any document to show that he was the owner of house No.253. There was no written agreement between him and the wife. He did not record in Nagpur Municipal Corporation that the wife was his tenant. He denied that he issued false rent receipts.

9. The husband filed an affidavit of evidence in verbatim reproducing the contentions in the written statement. In the cross-examination he feigned ignorance about the rental accommodations of wife and daughter. He denied that the wife had paid rent as claimed by her. He further denied that medical expenses of Rs.26,000/- were incurred by the wife. He stated that he did not remember his gross salary at the time of retirement. When he was confronted with his pension papers he admitted them. He denied that as per last pay certificate, his gross salary was Rs.74,000/-. He

deposed that he was getting pension of Rs.28,000/- per month. He admitted that he did not file any document about his pension. He admitted that as per page No.13 of his pension papers (Exh.87), his pension was calculated at Rs.34,970/-. He admitted to have received provident Fund amount of Rs.5,00,000/-. He denied that he received gratuity of Rs.5,77,005/-. He admitted to have received commutation amount of Rs. 7,02,562/-. He admitted that he was residing with his mother but stated that he did not know that the house where he resided was owned by his mother. He admitted that he was not paying rent. He admitted that his father was a pensioner, who died on 24/04/2014. He stated that he did not know whether his mother was getting pension of Rs.8,500/- per month. He admitted that facility of medical reimbursement was available to him. He admitted that he did not have any proof to show that the wife was earning from tuition classes. He admitted that he had undivided share in the agricultural land at Pathardi.

10. Nitin Deshkar, the landlord of the wife was examined by the husband, who deposed that he knew the wife since 2012 when she came as a tenant along with her daughter. His two bed room-hall-kitchen flat was taken on rent of Rs. 6,800/- per month by the

wife in the year 2012, the rent was excluding water tax and electricity charges. He stated that wife- Shubha was a house wife. He did not issue the rent receipts. The daughter of Shubha was taking education. In cross examination he admitted the property card extract of his flat.

11. The Family Court after appreciating the evidence on record awarded Rs.13,000/- including maintenance @ Rs.5,000/-, rent @ Rs.6,800/- and medical expenses @ Rs.1,200/-, per month from the date of petition and Rs.1,74,400/- towards past rent for past three years and Rs.26,000/- towards past medical expenses. The amount of interim maintenance was directed to be adjusted. Being aggrieved by the award of maintenance, the husband has filed present appeal.

12. Heard the learned advocates for the parties. The learned advocate for the appellant/husband has challenged the impugned judgment only on the point of quantum awarded by the Family Court. He strenuously argued that the Family Court has awarded exorbitant amount of maintenance to the wife. Taking into consideration the standard of living of the parties and the fact that

the husband was retired and he was getting meager pension, the maintenance awarded by the Family Court was excessive. Further submission is that the daughter is already in service. He further argued that the medical bills were not proved by examining the medical shop owner who issued the said bills, hence the Family Court ought not to have allowed the medical expenses to the wife. He therefore, argued that taking into consideration the facts and material on record, at the most the Family Court could have awarded Rs.7,500/- to the wife. He, therefore, prayed that the appeal may be allowed and the maintenance awarded to the wife be reduced.

13. The learned advocate for the respondent-wife on the other hand supported the judgment of the Family Court stating that the Family Court has rightly arrived at the quantum of maintenance and the other amounts and no case is made out by the husband to interfere with the same. He therefore, prayed that the appeal may be dismissed.

14. Heard both the sides. Perused the record. In view of the rival contentions, following point arises for determination :

“Whether the quantum of maintenance awarded by the Family Court is proper, or the same liable to be reduced ?”

15. The wife has proved payment of past rent and present rent by producing on record her bank statements at Exhs.36 and 38 wherein monthly debit entries of the rent amounts which were credited in the account of landlord were reflected. By examining landlord Chithore she has proved the payments of rent. The witness examined by the husband namely Nitin Deshkar has also proved that wife had taken his flat on monthly rent of Rs. 6,800/- in the year 2012. The wife has therefore proved that in the past three years she had paid rent of Rs.1,74,400/- and at the time of deposition she was paying the rent at the rate of Rs.6,800/- per month.

16. The wife has also proved food expenses by proving 13 bills (Exh.40) of food and other expenses. The medical expenses incurred by her were also proved by her by placing on record 45 medical bills (Exh.39). The wife has therefore established her claim of maintenance amount by leading cogent and reliable evidence. The wife therefore has also proved on record the change in the circumstances, justifying the alteration in the maintenance amount

as contemplated by Section 25 of the Act of 1956. We do not agree with the submission of the learned counsel for the appellant-husband that since the medical shop owner who issued medical bills was not examined, the bills should not have been admitted and taken into consideration by the learned Family Court. In view of Section 14 of the Family Courts Act, 1984, the Family Court is entitled to take into consideration documents which in its opinion deals effectually with the dispute whether or not the document would be otherwise relevant or admissible under the Indian Evidence Act, 1872. Therefore, the Family Court was justified in considering the medical bills while awarding medical expenses to the wife. Nothing damaging to the claim of wife could be brought on record during her cross examination. Evidence on record also indicates that the husband was getting pension at the rate of Rs.34,970/- and he received pensionary benefits i.e. Provident Fund Rs.5,00,000/-, commutation Rs.7,00,000/- and gratuity Rs.5,77,005/- in view of admitted pension papers (Exh.87). The husband has further admitted that he was residing in the house of his mother. It appears from the record that his mother must be getting pension after the death of his father who was a pensioner. The husband has admitted that he was entitled for reimbursement

of the medical expenditure incurred by him. It is therefore obvious that except the wife nobody is dependent on the husband. The daughter is major now and admittedly has started earning, therefore the husband is not required to pay maintenance of Rs.4,000/- per month to the daughter. In view of the evidence on record, we are of the considered view that the wife has proved her case under Sections 18 and 25 of the Act of 1956 by leading cogent evidence of change in circumstances and the fact that the husband had sufficient means to pay the enhanced maintenance. Taking into consideration the standard of living of the parties, we are of the opinion that the Family Court was justified in awarding Rs.13,000/- per month maintenance (including maintenance @ Rs.5,000 + rent @ Rs.6,800/- + medical expenses @ Rs.1,200/-) from the date of petition and Rs.1,74,400/- towards rent of past three years and Rs.26,000/- towards past medical expenses. We, therefore, answer the point accordingly.

17. We find no merit in the appeal filed by the husband and according to us the husband has failed to make out any case to interfere in the order passed by the Family Court. The Family Court has passed a well reasoned order on the basis of evidence produced

before it and no fault can be found with the orders passed by the Family Court. The present appeal being meritless, the same is dismissed. Parties to bear their own costs.

JUDGE

JUDGE

J.Pethe..