

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FAMILY COURT APPEAL NO. 14 OF 2017

1. Sau. Pradnya @ Anjali w/o Ajay
Kukde, aged about 35 years,
occupation – Nil.
2. Kumar s/o Ajay Kukde,
aged about 7 years,
occupation – Nil
(Minor) through its natural
guardian mother i.e. Appellant
No. 1.

Both r/o c/o Shri Sudhakar Kamble,
Plot No. 84, Shrihari Nagar No. 3,
Manewada Ring Road, Nagpur – 27. ... APPELLANTS

Versus

Ajay s/o Bakaramji Kukde,
aged about 40 years,
occupation – Lecturer, r/o 6/B,
Sadgurunanagar (Arjun Nagar)
Nagpur Road, Amravati,
Tahsil and District – Amravati. ... RESPONDENT

Shri A.A. Sonak, Advocate for the appellants.
Shri N.S. Khandewale, Advocate for the respondent.

.....

**CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.
FEBRUARY 22, 2021.**

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

This appeal by the appellant – wife is directed

against the judgment and decree dated 28.01.2016 in Petition No. C-104 of 2009 filed by the appellant – wife under Sections 18 & 20 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the Act of 1956) passed by the Judge, Family Court No. 4, Nagpur, whereby the claim for maintenance of the appellant – wife was denied to her and the claim for maintenance of appellant No. 2 (minor son) was allowed @ Rs.5,000/- (Rs. Five thousand only) per month from the date of order.

2. The facts necessary to decide the present Appeal are as under :

(i) It is the case of the appellant – wife that she is a legally wedded wife of the respondent – husband, who is working as a Teacher in Sitaram Choudhary Arts, Commerce and Science College, Warud and their marriage was solemnized on 13.05.2007 as per rites and customs prevailing in their community. Out of said wedlock, they have one son viz., Kumar, born on 22.09.2008. After the marriage, for a few

days, there was marital harmony between the parties, however, thereafter she was subjected to physical and mental harassment due to which since 06.04.2009, the couple have been living separately.

(ii) The appellant – wife filed a Petition No. C-104 of 2009 under Sections 18 and 20 of Hindu Adoptions and Maintenance Act, 1956, claiming maintenance @ Rs.10,000/- (Rs. Ten thousand only) per month for herself and Rs.5,000/- (Rs, Five thousand only) for her minor son - appellant No. 2. At the time of filing of Petition, the respondent – husband was drawing net monthly salary of Rs.25,384/-.

(iii) It is worthwhile to mention here that the respondent – husband had also filed a Petition No. A-288 of 2010 (Old No. 181 of 2009) (Old No. A-254 of 2009) under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, for decree of divorce on the ground of cruelty. In response to the notice issued on the said petition, appellant No. 1 – wife had appeared and filed her written statement whereby she denied

all the adverse allegations.

(iv) Both the parties led evidence before the Court and the learned Family Court, on the basis of material on record vide common judgment dated 28.01.2016 dismissed the Petition No. A-288 of 2010 filed by the respondent – husband for divorce mainly on the ground that there is no valid and legal marriage between the parties and accordingly rejected the prayer for grant of maintenance to the appellant – wife, she not being a legally wedded wife of the respondent – husband.

(vi) The learned Family Court has observed that the eligibility of wife to claim maintenance under Section 18 of the Act of 1956 is to be decided on the basis of validity of the marriage between the parties and as per evidence brought on record. The learned Family Court recorded the finding that the appellant – wife married with the respondent – husband during the subsistence of first marriage of the respondent – husband with one Rajni and, therefore, the marriage between appellant No. 1 – wife and respondent – husband, cannot be said to be a

valid marriage.

(vii) The learned Family Court, however, granted maintenance @ Rs.5,000/- (Rs. Five thousand only) per month for appellant No. 2 – minor son – Kumar, against the net salary of Rs.71,139/- payable to the respondent – husband in September 2015, from the date of the order.

(viii) The appellants herein i.e. wife and minor son through his natural guardian (mother) challenged the judgment of the Family Court No. 4, Nagpur dated 28.01.2016 refusing maintenance to appellant No. 1 – wife and for enhancement of maintenance to appellant No. 2 - her minor son – Kumar.

3. We have heard Shri Sonak, learned counsel for the appellants and Shri Khandewale, learned counsel for the respondent.

4. The points which arise for determination of this

Court are :

(I) Whether Appellant No. 1 – wife is entitled for maintenance; qua the finding of nullity of marriage by the competent Court.

(II) Whether Appellant No. 2 – minor son is entitled for enhancement of maintenance.

5. As to Point No. 1 is concerned, as the competent Court has already recorded a finding that there is no valid marriage between Appellant No. 1 and the respondent, therefore, as per the provisions of Section 18 of the Act of 1956, Appellant No. 1 is not entitled for maintenance. In this Family Court Appeal, Appellant No. 1 has only challenged the order of refusal of maintenance to her and, therefore, in this jurisdiction, there is no scope for this court to comment on the validity of the marriage between the parties as the competent Court has already decided the said issue against Appellant No. 1 – wife and it is informed to us that the appellant – wife has

already approached the appropriate forum for redressal of her grievance. In the circumstances, Point No. 1 is answered in the negative.

6. As to Point No. 2 is concerned, at the outset, Section 20 of the Act of 1956, *inter alia* states that a Hindu is bound, during his/ her lifetime, to maintain his or her legitimate or illegitimate children as long as the child is a minor. Clause (b) of Section 3 of the Act of 1956, defines “*maintenance*” which includes -

“(i) *in all cases, provision for food, clothing, residence, education and medical attendance and treatment;*

(ii) *****

7. Section 23 of the Act of 1956 confers discretionary powers upon the Court to determine the amount of maintenance under the provisions of the Act, having regard to the following considerations mentioned in sub-section (2) of Section 23 of the said Act :

- “(a) the position and status of the parties;*
- (b) the reasonable wants of the claimant;*
- (c) if the claimant is living separately, whether the claimant is justified in doing so;*
- (d) the value of the claimant’s property and any income derived from such property, or from the claimant’s own earnings or from any other source;*
- (e) the number of persons entitled to maintenance under this Act.”*

8. The learned counsel for the appellant – wife submits that considering the salary and the status of the respondent – husband, appellant No. 2 is also entitled to enjoy the same status as of his father since 2009 and Appellant No. 1 is fighting her case for maintenance and her petition came to be decided on 28.01.2016 and the amount of maintenance to the minor son was granted from the date of order.

9. With regard to liability of the respondent – husband, the learned counsel for the respondent submits that the respondent husband has remarried again and is having a son out of this wedlock. He has the responsibility to maintain

his minor son and aged parents.

10. We have considered the submissions on behalf of both the parties. Keeping in mind the aforesaid statutory provisions, it is not in dispute that the current net salary of the respondent – husband is Rs.85,000/- per month. The couple is residing separately since 2009. The custody of appellant No. 2 (son – Kumar) is with appellant No. 1 since their separation. The current age of appellant No. 2 is about 12 years. The learned counsel could not point out any source of income to appellant No. 1 – wife.

11. The learned Family Court granted maintenance from the date of order. A perusal of the record with the assistance of learned counsel for the parties also does not reflect that during the pendency of the petition for maintenance, appellant No. 2 was receiving interim maintenance except that by an order dated 09.08.2014 (below Exh. 40), the respondent was directed to pay Rs.17,850/- towards School Fee installments for their child Kumar.

12. With regard to directions about the date from which maintenance must be awarded, the Hon'ble Apex Court recently in the case of Rajnish vs. Neha & Anr., reported at AIR 2021 SC 569, after considering the divergent views of various High Courts about the date from which the maintenance must be awarded, held that the rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife/dependant to overcome the financial crunch which occurs on separation from the husband. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court. It is further held that 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 Section 125(2) of the Criminal Procedure Code, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 of the Criminal Procedure Code.

13. In the instant case, in the year 2016 when the Family Court delivered the judgment and granted maintenance of Rs.5,000/- for minor son, he was aged about 8 years. Undisputedly, he is a growing and School going child. Keeping in mind the liabilities of the respondent – husband to look after his son and old parents and considering the need of appellant No. 2 – minor son Kumar for the provision of his food, clothing, education and his holistic developments, in the considered view of this Court, appellant No. 2 should receive at least Rs.10,000/- per month from the date of filing of this Appeal and Rs.5,000/- per month from the date of application till the date of filing of the present appeal i.e. 30.06.2016.

14. In view of the above, we pass the following order :

The order passed in Petition No. C-104/2009 on 28.01.2016 is partly modified. It is held that Appellant No. 2 – minor son of Appellant No. 1 and the respondent would be entitled to receive maintenance @ Rs.10,000/- (Rs. Ten thousand only) per month. The respondent shall pay maintenance in accordance with the order passed by the Family

Court @ Rs.5,000/- (Rs. Five thousand only) per month from 05.10.2009 when the proceedings were filed till 30.06.2016 when the present Appeal was filed. From 1st July 2016, the respondent shall pay maintenance to Appellant No. 2 @ Rs.10,000/- (Rs. Ten thousand only) per month. Time of three months is granted to the respondent to clear the arrears of maintenance. Needless to state that the respondent is entitled for set-off for the amount, if any, already paid.

15. Family Court Appeal is partly allowed in the aforesaid terms. The parties shall bear their own costs.

JUDGE

JUDGE

*GS.