

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

FAMILY COURT APPEAL NO.20/2015

Umabai w/o Babulal Rawat,
Aged about 56 years, Occ-Nil.
R/o. Dattawadi, Nagpur-23.

... Appellant

-vs-

Babulal s/o Dindyal Patel Rawat,
Aged about 62 years, Occ.Retired
R/o At Post Gorakher, Baitul,
District and Tahsil-Baitul-484440(MP).

..Respondent

...

Shri S.Raisuddin, Advocate for appellant.
Shri S.D.Khati, Advocate for respondent.

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

Dated : 11th February, 2021.

Oral Judgment : (Per A.S.Chandurkar, J.)

The challenge raised in this appeal filed under Section 19 of the Family Courts Act, 1984 is to the judgment dated 09.06.2014 passed in Petition No. C-30 of 2013 by the Family Court, Nagpur. By that order the proceedings for grant of medical expenses stands dismissed.

2. The parties to the present proceedings were married on 17.05.1982. During subsistence of the said marriage the appellant-wife was required to initiate proceedings for grant of maintenance. In Petition bearing No. C-47 of 2011 the Family Court on 03.12.2012 enhanced the

amount of maintenance to Rs.3,000/- per month. On 01.11.2012 the appellant underwent 'Cataract' operation and thereafter filed the present proceedings on 04.04.2013 for grant of medical expenses. These proceedings were opposed by the respondent-husband on the ground that as the amount of maintenance had been enhanced from Rs.2,000/- to Rs.3,000/- per month, it was not necessary to further grant medical expenses. After considering the evidence on record, the learned Judge of the Family Court accepted the stand taken by the respondent and dismissed the petition. Hence this appeal by the wife.

3. Shri S.Raisuddin, learned counsel for the appellant submitted that while deciding the earlier proceedings that is Petition No. C-47 of 2011 the documents pertaining to an eye operation conducted in 2009 had been considered. Shortly before those proceedings were decided on 03.12.2012, the appellant was again operated on 01.11.2012 and she was required to spend an amount of Rs.30,000/- towards medical expenses. He submitted that those documents were not placed on record in the earlier proceedings and therefore the medical expenses as claimed for the operation conducted on 01.11.2012 ought to have been allowed. In support of his contentions the learned counsel placed reliance on the decision in *Ajay Saxena Vs. Smt. Rachna Saxena AIR 2007 Delhi 39* .

4. Shri S.D.Khati, learned counsel for the respondent opposed the aforesaid submissions. According to him, by taking into account the medical expenses of the appellant, the amount of maintenance was enhanced from Rs.2,000/- to Rs.3,000/- per month. When the earlier proceedings were decided on 03.12.2012 the appellant was operated on 01.11.2012, those documents ought to have been placed on record in the earlier proceedings. He further submitted that as the amount of maintenance was enhanced, there was no reason to further grant medical expenses. Moreover the doctor who operated the appellant had not been examined. He therefore submitted that there was no reason to interfere with the impugned judgment.

5. In the light of the rival submissions, the following point arises for determination :

Whether the appellant is entitled to be granted medical expenses ?

6. We have heard the learned counsel for the parties at length and with their assistance we have perused the records of the case. It is not disputed that initially the appellant was operated in November 2009 as per documents at Exhibits 20-1 and 20-2. By considering these documents along with other material on record, the Family Court in the earlier proceedings enhanced the amount of maintenance from Rs.2,000/-

to Rs.3,000/- per month. This enhancement was payable from the date of the order which was dated 03.12.2012. As per the documents at Exhibits 20-3 and 20-4 the other eye of the appellant was operated and she had to pay Rs.30,000/- towards medical expenses. It is for claiming these expenses that the present proceedings have been filed.

7. In the impugned order the learned Judge of the Family Court has rightly observed that the testimony of the appellant was sufficient to prove that her right eye was operated on 01.11.2012 and that it was not necessary to examine the concerned doctor. However on the ground that the earlier proceedings were decided on 03.12.2012 which was after the appellant was operated on 01.11.2012, the Court refused to grant the medical expenses. We find that shortly prior to the earlier proceedings being decided, the appellant was operated on 01.11.2012. Those documents were not placed on record in the earlier proceedings. The appellant was therefore justified in seeking reimbursement of those medical expenses. The learned counsel for the appellant has rightly placed reliance on the decision in *Ajay Saxena* (supra) which has considered the definition of the expression 'maintenance' under Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 to grant medical expenses. Moreover the amount of maintenance being Rs.3,000/- per month that too payable from 03.12.2012 is a factor which cannot be

ignored. We find that the appellant has proved that her right eye was operated on 01.11.2012 and she had to spend an amount of Rs.30,000/- towards medical expenses. She is therefore entitled to receive the same. The point as framed is answered by holding that the appellant is entitled to receive the medical expenses.

8. Accordingly for the aforesaid reasons, the judgment of the Family Court dated 09.06.2014 in Petition No. C-30 of 2013 is set aside. The respondent is directed to pay an amount of Rs.30,000/- towards medical expenses to the appellant within a period of six weeks from today. On failure to pay such amount to the appellant within a period of six weeks, the amount would carry interest @6% per annum after expiry of the period of six weeks. Family Court Appeal No.20 of 2015 is allowed in aforesaid terms.

JUDGE

JUDGE

Andurkar