

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

FAMILY COURT APPEAL NO. 17 OF 2017

Mrs. Kanta w/o Annasaheb Dhabekar,
aged about 55 years, Occ. Nil,
R/o C/o Yadavrao Bansod, Chitnis Park,
Bhadarpura, Nagpur.

...APPELLANT

Versus

Annasaheb s/o Vithalrao Dhabekar,
aged about 60 years, Occ. Retired,
R/o Plot No. 109, Mahatma Gandhi Nagar,
Hudkeshwar Road, Nagpur.

...RESPONDENT

Shri A.A. Sambaray, Advocate for the appellant.
Shri D.G. Paunikar, Advocate for the respondent.

.....

CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.
DATED : FEBRUARY 10, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.) :

Heard.

2. The challenge in the present appeal is to the order dated 11/04/2016 passed by the Judge, Family Court No. 2, Nagpur in Petition No. C-79/2012, whereby the respondent/husband was directed to pay an amount of

Rs.1,800/- (rupees one thousand eight hundred) per month, including the maintenance amount granted to the appellant/wife under Sections 125/127 of the Code of Criminal Procedure (hereafter “the Code”, for short).

3. The appellant/wife filed a petition under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (hereafter “the Act of 1956”, for short) for grant of maintenance before the Family Court, Nagpur. She pleads that her marriage with the respondent was solemnized on 11/05/1990 at Nagpur. However, after marriage, due to differences cropped up between the parties, she was constrained to live at her parental house. Thus, the respondent/husband withdrawn himself from her society for no valid reasons, and thereby neglected and refused to maintain her.

She further states that at the time of marriage, the respondent/husband was working as an ‘Upper Division Clerk’ in the Office of the Deputy Collector, Nagpur, and was earning salary of Rs.7,800/- (rupees seven thousand eight hundred) per month, and was leading a lavish and luxurious life, while

she was living at the mercy of her relatives and well-wishers without any fault on her part. She preferred a petition under Section 125 of the Code for grant of maintenance bearing petition No. E-829/1996 wherein the Principal Judge, Family Court, Nagpur, was pleased to allow her petition, and granted her maintenance @ Rs.500/- (rupees five hundred) per month vide order dated 09/09/1996.

She further states that thereafter, the respondent/husband was promoted as S.I. Foodgrains Distribution in Food and Grains (Rationing) Office at Mahal Division, Nagpur, and was drawing a salary of Rs.15,686/- (rupees fifteen thousand six hundred eighty six) per month. As she was not able to maintain herself within a meager amount of Rs.500/- (rupees five hundred), she filed an application under Section 127 of the Code for enhancement of maintenance vide application No. E-187/2000. The Family Court, Nagpur, was pleased to enhance the same up to Rs.1,500/- (rupees one thousand five hundred) per month vide order dated 03/06/2003.

She further states that in the meantime, the respondent/husband filed a petition for divorce vide petition No. A-218/1998. The same was dismissed vide judgment dated 03/06/2003, and the appeal against the said judgment is pending consideration before this Court.

She further states that the respondent/husband was retired from service on 11/05/2010, and getting pension of Rs.12,000/- (rupees twelve thousand) per month. Apart from receiving pension, the respondent/husband sold out his ancestral property situated at Ruikar Road, Near Ram Bhandar, Badkas Chowk, Mahal, Nagpur, for a valuable consideration of Rs.50,00,000/- (rupees fifty lakh). That out of the said sale proceeds, the respondent/husband has purchased a new house situated at Plot No. 109, Mahatma Gandhi Nagar, Hudkeshwar Road, Nagpur. That he is also receiving rent of Rs.5,000/- (rupees five thousand) per month from the said house. As she was facing difficulty in managing her livelihood within a meager amount of Rs.1,800/- (rupees one thousand eight hundred), as the cost of living is increasing day-by-day, she filed the present petition, and claimed maintenance @

Rs.5,000/- (rupees five thousand) per month.

4. The respondent/husband, in his reply, does not deny about the fact of his marriage, service, promotion, salary and the orders of maintenance under Sections 125/127 of the Code. He also does not dispute that he was retired from his service on 31/05/2010. However, he states that he is receiving Rs.7,605/- (rupees seven thousand six hundred five only) towards pension, and also disputed the sale consideration of Rs.50,00,000/- (rupees fifty lakh). He specifically states that it was an ancestral property, and that he received his share of Rs.4,12,500/- (rupees four lakh twelve thousand five hundred) only. He further states that the appellant/wife has sufficient means, as she has been given the possession of the properties of her father, which includes agricultural land/s, after his death.

5. Furthermore, the respondent/husband states that he is suffering from various illness over which he is required to spent Rs.4,000/- to Rs.5,000/- per month.

6. The Family Court, Nagpur, after framing necessary issues, recorded evidence as adduced by the parties. The Family Court, after considering the evidence on record, passed the order directing the respondent/husband to pay Rs.1,800/- (rupees one thousand eight hundred) towards maintenance, inclusive of the maintenance amount granted under Sections 125/127 of the Code, to the appellant/wife. This judgment is impugned in this appeal.

7. Shri Sambaray, learned Counsel for the appellant/wife, submits that considering the financial resources available at the disposal of the respondent/husband, i.e., pension around Rs.15,000/- (rupees fifteen thousand) per month, house rent around Rs.5,000/- (rupees five thousand) per month, and that he received substantial amount of retiral benefits also, the appellant/wife too is entitled to live her livelihood as per the standard which the respondent/husband is enjoying.

He further submits that Rs.1,800/- (rupees one thousand eight hundred) per month towards maintenance is too meager an amount, considering the present cost of living. Lastly he submits that the respondent/husband has not specifically stated as to which of the ailments he is suffering from, and thus prayed for increasing the amount of maintenance.

8. As against this, Shri Paunikar, learned Counsel for the respondent/husband, opposing the appeal submits that considering the age of the respondent/husband, so also considering the fact that the appellant/wife is residing in her own house, the amount of maintenance, as has been granted by the Court below, is just and proper, and need not warrant any interference.

9. We have heard the submissions put forth on behalf of both the sides.

10. The following point arose for determination of this Court :

“Does the quantum of maintenance, as has been granted by the Court below, is just and proper ?”

11. At the outset, the affirmative findings, with regard to the justifiable reason for the appellant/wife to live apart from the respondent/husband without forfeiting her claim of maintenance, and that her entitlement for maintenance under the Act of 1956, have attained finality, as the respondent/husband has not preferred any appeal against these findings. Therefore, this Court has only to consider the quantum of maintenance on the basis of financial position of the parties which is brought on record.

12. A perusal of the evidence on record would reflect that the respondent/husband does not deny the fact that he was getting an amount of Rs.16,816/- (rupees sixteen thousand eight hundred sixteen) per month towards pension in March, 2016. Today, we are in 2021. By now, undoubtedly, the

pension amount of the respondent/husband must have been increased by not less than 10-15%.

13. On a query being put to the learned counsel for the respondent/husband with regard to his current pension, he could not answer the query for want of instructions.

14. In the given facts, so also considering the fact that the cost of living is increasing exponentially day-by-day, in the considered opinion of this Court, Rs.3,000/- (rupees three thousand) per month, inclusive of the maintenance amount granted under Sections 125/127 of the Code, would be sufficient. Also, we are of the opinion that the said increased maintenance amount must be paid to the appellant/wife from 01/01/2021, since undisputedly, the respondent/husband has already been retired from service wayback in 2010. Hence, the following order :

ORDER.

- i. The appeal is partly allowed.
- ii. The judgment and order dated 11/04/2016 passed by the Judge, Family Court No. 2, Nagpur, in petition No. C-79/2012 stands modified to the extent that the respondent/husband shall pay Rs.3,000/- (rupees three thousand) per month to the appellant/wife, inclusive of the maintenance amount granted under Sections 125/127 of the Code, with effect from 01/01/2021.
- iii. In addition, the respondent/husband shall pay Rs.5,000/- (rupees five thousand) to the appellant/wife towards litigation expenses.

(JUDGE)**(JUDGE)**
