

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 41 OF 2021

1. Kalpana w/o Sainand @ Sainath Dhakane,
Age: 35 years, Occu: Advocate,
2. Ku. Sanskruti d/o Sainand @ Sainath Dhakane,
Age : 13 years, Occu: Education,
Under Guardianship of mother/appellant No.1
Both R/o : Shriharsiddhi Society, Plot No.11,
Jadhavwadi, Infront of SBOA School,
Dist: Aurangabad, At present : Plot No.41 & 42,
New Ex-Servicemen Colony, Padegaon,
District : Aurangabad
(Laxmanrao Rauba Sonawane) ...Appellants

Versus

Sainand @ Sainath s/o Kashinath Dhakane,
Age: 37 years, Occu: Job Work,
R/o: Shriharsiddhi Society, Plot No.11,
Jadhavwadi, Infront of SBOA School,
Dist: Aurangabad, At present :
House No. 4155, Plot No.01, Nath Vihar,
Paithan, Tal : Paithan,
District: Aurangabad. ...Respondents

Mrs Preeti Wankhede, Advocate for Appellants
Mr Ganesh Suryakant Dahale, Advocate for Respondent/Sole.

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 17-02-2023
PRONOUNCED ON : _____**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The present appeal is filed by the original petitioners in Petition No. C-10/2015 and Petition No. E-203/2016 which are disposed of by common Judgment and order dated 27-01-2021 by Family Court

at Aurangabad. Appellants are wife and daughter of respondent. They are seeking enhancement of maintenance amount in this appeal.

2. The appellants filled the petition u/s 18 of the Hindu Adoption and Maintenance Act before Family Court for maintenance of Rs.30,000/- per month to the appellant No.1 and Rs.20,000/- per month to the appellant No.2. They had instituted separate proceeding under section 125 of the Code of Criminal Procedure, 1973 seeking maintenance of Rs.30,000/- each. Both these petitions were taken up together for hearing by Family Court and disposed of by common Judgment and order dated 27-01-2021. The Family Court allowed the petition No. C-10/2015 filed u/s 18 of the Hindu Adoption and Maintenance Act and granted the maintenance of Rs.15,000/- each to both the appellants. The Petition No. E-230/2016 filed under section 125 of the Cr.PC is disposed without separate order granting liberty to appellants to recover maintenance amount under either of the provisions of law.

3. It is the contention of appellants that the appellant No. 1 and respondent married on 16-12-2004 and they cohabited for short duration. On account ill-treatment at the hands of respondent, the appellant left his company to reside with her parents. She was

pregnant at that time. On 06-01-2007, the appellant No. 2 was born and looked after by appellant No.1 alone.

4. The respondent never arranged for the maintenance of the appellants. He neglected them. The appellant No.1 had instituted the proceedings under the Domestic Violence Act for grant of maintenance before the Judicial Magistrate First Class in Misc. Criminal Application No. 623/2007, which was allowed thereby directing the respondent to pay an amount of Rs.6,000/- to the appellant No.1 and Rs.5,000/- towards house rent. That order was carried in appeal before the Sessions Court at Aurangabad. The Appellate Court granted maintenance of Rs.6,000/- to the appellant No.1 and Rs.3,000/- to the appellant No.2 in addition to the house rent of Rs.5,000/- per month.

5. It is the contention of the appellants that the respondent holds diploma in mechanical engineering and runs his business in the name of "Eligh Scrap Agency". He earns Rs.2,00,000/- per month. However, he left the appellants to lead miserable life. The appellant No.2 is taking school education. The appellants are facing difficulties to meet day to day expenses. In the compelling circumstances, appellants filed the proceedings under section 18 of the Hindu Adoption and Maintenance Act vide petition No. C-10/2015 as well as under section 125 of the Cr.PC Vide Petition No. E-230/2016.

The Family Court, Aurangabad allowed both the petitions. However, granted inadequate maintenance to the appellants.

6. The learned advocate Ms Preeti Wankhede appearing for the appellants would submit that the respondent had preferred the Family Court Appeal No.38/2021 against impugned common Judgment and order dated 27-01-2021 (which is also subject matter of this appeal). This Court dismissed his appeal vide Judgment and order dated 11-10-2021 after taking cognizance of conduct of the respondent. Learned advocate for the appellants would further submit that the respondent has income from various sources. He owns business apart from the huge agricultural land and getting rental income from the properties owned by his father. She would point out that the respondent has not filed his affidavit disclosing the sources and income as per the directions issued by the Supreme Court of India in ***Rajesh Vs. Neha reported in 2020 SCC Online 903***. She would further submit that the respondent did not step in witness box.

7. The learned advocate for the appellants would submit that income tax returns of respondent / husband, available on record would show that in assessment year 2019-2020, the gross receipt of the respondent was Rs.28,18,965/-. However, he reduced taxable income to Rs.1,99,500/- by transferring the amount in the name of

his parents. She would submit that the maintenance amount granted by the Family Court, is inadequate and would not be sufficient to maintain the appellants with dignity considering their standard of living.

8. Per contra, Mr Ganesh Dahale, learned advocate appearing for respondent would submit that the Family Court has granted excess and exorbitant maintenance in absence of the evidence indicating income of the respondent No.1. He submits that the income of the respondent reduced continuously because of loss in the business from 2017 onwards. The landed and house properties belonging to his parents cannot be considered while computing his income. He would urge that respondent is required to maintain himself and pay the loan installments of the flat purchased by him to make residential arrangements of the appellants. He would submit that respondent has moved the application for modification of the order / reduction of maintenance before the Family Court at Aurangabad. That application is pending for adjudication till this date. The learned advocate for the respondent further submits that the appellant No.1 is a practicing advocate and she has sufficient earning to maintain herself and appellant No.2. He would urge to dismiss the appeal.

9. We have considered the arguments advanced by the learned advocates appearing for the respective parties. We have perused the record.

10. The Family Court Appeal No.38/2021 was filed by the respondent challenging the same order which is subject matter of present appeal. The challenge raised by the respondent to the assessment of maintenance amount fixed by the Family Court has been rejected by this Court vide Judgment and order dated 11-10-2021. Therefore issue that requires consideration in this appeal is limited to the extent of claim for enhanced maintenance amount by the appellants.

11. The Family Court on appreciation of evidence concluded that the respondent owns movable and immovable properties. However, he withheld his exact income from the Court. It is the matter of record that the appellant No. 1 has filed her affidavit regarding the source of income. She admits that she is an advocate by profession. However, claims that she is not generating income from the profession.

12. The appellants have claimed the total maintenance of Rs.62,400/- per month. The maintenance of Rs.14,000/- per month has been awarded by the Sessions Court under the provisions of the Domestic Violence Act to the appellants.

13. The Family Court, fixed the maintenance amount of Rs.15,000/- per month each to the appellants on the basis of Income Tax returns submitted by respondent No. 1 during the period from 2011-2012 to 2014-2015, however, there is nothing on record to gather present income of the respondent. It is a matter of record that in R.D. No. 32/2015, the appellant No.1 and respondent had entered into the compromise. The respondent No.1 had agreed to pay maintenance of Rs.20,000/-per month to the appellant No.1 and also agreed to bear educational expenses of the appellant No.2. Unfortunately, this settlement remained on paper. However, it can be presumed that the respondent is capable of providing the maintenance of Rs.20,000/- to the appellant No.1. Simultaneously, he is responsible to bear the expenses towards maintenance and education of the appellant No.2. Pertinently, this Court while dismissing the Family Court Appeal No. 38/2021 observed that the gross receipt of the respondent for assessment year 2019-2020 was Rs., 28,18,955/-. However, that has been reduced in the balance sheet to bring down taxable income to Rs.1,99,500/-. This Court has further observed that the maintenance amount granted by the Family Court is merely 15% of the gross income of the respondent No.1. Assuming that appellant No. 1 has some professional earning, it

would not help respondent to avoid his liability to provide maintenance to appellants.

14. In view of the aforesaid observations, though it is difficult to work out the exact income of the respondent No.1, considering his conduct, particularly failure to file income disclosure affidavit, is sufficient to draw adverse inference against him. We deem it appropriate to grant the maintenance @ Rs.20,000/- per month to the appellant No.1 and Rs.15,000/- per month to the appellant No.2. Accordingly, the appeal deserves to be partly allowed on aforesaid terms. Hence, we pass the following order: -

ORDER

- (A) The Appeal is partly allowed.
- (B) The Judgment and order passed by the Family Court, Aurangabad is modified to the extent that the respondent shall pay the appellant No.1 monthly maintenance of Rs.20,000/- from the date of filing of the petition No. C-10/2015 i.e. 09-05-2015.
- (C) The respondent shall pay the appellant No.2 monthly maintenance of Rs.15,000/- from the date of filing of the petition No. C-10/2015 i.e. 09-05-2015.
- (D) The respondent shall pay costs of Rs.20,000/- to the appellants and bear his own costs in this appeal.
- (E) The rest of the order passed by the Family Court, Aurangabad is maintained as it is.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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