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908 sa 618.13

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**908 SECOND APPEAL NO. 618 OF 2013
WITH CIVIL APPLICATION NO. 10864 OF 2013**

**VITTHAL ABASAHEB SANAP AND OTHERS
VERSUS
NANDUBAI VITTHAL SANAP**

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Advocate for Appellant : Mr. Palod L.B.

Advocate for Respondents : Mr. D.R. Markad (ABSENT)

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CORAM : Y.G. KHOBRAGADE, J.

DATE : 13.03.2024

P C.:-

1. Heard the learned counsel appearing for the appellants at length. After service of notice, Mr. D. R. Markad put his appearance, but today he is absent. The present appeal is filed under Section 100 of the C.P.C. challenging the judgment and decree Dated 11.12.2012 passed by the learned Principal District Judge, Ahmednagar arising out of judgment and decree dated 04.08.2007 passed by the learned C.J.J.D., Jamkhed in R.C.S. No.108/2003.
2. The appellants are the original defendants and the respondent is the original plaintiff. For the sake of brevity, I would refer the parties in their original capacity as plaintiff and defendants.

3. The plaintiff-wife filed an R.C.S. No.108/2003 claiming that she is legally wedded wife of defendant No.1. Her marriage was solemnized with the defendant no.1 on 30.05.2002 as per Hindu rites and rituals. After marriage she cohabited with the defendant no.1., but After three years of marriage the defendants including her husband i.e. defendant no.1 started torturing her, so also, he demanded dowry. Ultimately, she was driven out of her matrimonial house due to non-fulfillment of illegal demand of dowry and since then she started residing at her parental house, however, defendant no.1 has not provided any maintenance to her. Therefore, plaintiff prayed for decree of maintenance to the tune of Rs.1200/- per month.

4. After service of notice the defendants appeared in the matter and filed their written statement at Exh.17. On the basis of rival pleadings on behalf of both the sides the learned trial Court framed issue.

5. In order to substantiate her claim, the plaintiff filed evidence affidavit, so also she has undergone cross-examination conducted on behalf of the defendants. The defendant no.1 filed his evidence affidavit. After hearing both the sides on 04.08.2007 the learned trial Court passed the judgment and decree holding that the plaintiff is entitled to receive Rs.1200/- towards maintenance per month. Being aggrieved by said judgment and decree, the defendants filed R. C. A. No.188/2007 before the learned District Judge. On

11.12.2012, the learned First Appellate Court confirmed the judgment and decree passed by the learned trial Court.

6. The learned counsel appearing for the appellants submits that both the Courts below failed to appreciate the evidence on record and wrongly held that the plaintiff-respondent is entitled for maintenance to the tune of Rs.1200/- per month, therefore, prayed for quashing and setting aside the concurrent evidence.

7. It is well settled principle of law that by invoking the jurisdiction under Section 100 of the C.P.C. this Court cannot interfere with the concurrent findings unless substantial question of law is involved and both the Courts concurrently held contrary to the provisions of law in the case in hand. The relationship between the respondent no.1 and the appellant no.1 i.e. original plaintiff and defendant no.1 has not been denied. It is also not in dispute that due to harassment at the hands of the defendants, so also the defendants drew out the plaintiff from her matrimonial house on account of non-fulfillment of illegal demand of dowry. As per the provisions of the Hindu Marriage Act, it is the primary duty of the husband to maintain his wife. There is nothing on record to prove that the defendant no.1 provided any maintenance to his wife i.e. plaintiff. On perusal of evidence recorded by both the Courts below it appears that after marriage the plaintiff was treated

well only for 15 days and thereafter all the ornaments from her person were removed. She was driven out from her matrimonial house. The defendants have not brought any substantial evidence on record or any material to show that the evidence recorded by the Courts below is perverse or illegal.

8. Therefore, I do not find any substantial question of law is involved in the present appeal. Therefore, it deserves to be dismissed hence the appeal is hereby dismissed. Pending Civil Application, if any, does not survive and also stands disposed of. No orders as to cost.

[Y. G. KHOBRADE, J.]