



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.18 OF 2023

Pramod Shankarrao Sawant,
Age 37 yrs., Occ. Unemployed,
R/o Kalyannagar, Nanded.
At present r/o Sy.No.82,
Behind Bhairoba Temple,
Hadapsar, Pune.

... Appellant

... Versus ...

Sujata w/o Pramod Sawant,
Age 34 yrs., Occ. Household and
Private Service,
R/o C/o Pandurang Dawane,
Ashirwadnagar, Pivli Girni,
Nanded, Tq. & Dist. Nanded.

... Respondent

...

Mr. S.M. Kamble, Advocate for the appellant

Mr. G.G. Suryawanshi, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 03rd JANUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

matter is heard finally at the stage of admission.

2 Heard learned Advocate Mr. S.M. Kamble for the appellant and learned Advocate Mr. G.G. Suryawanshi for the sole respondent.

3 Taking into consideration the facts of the case following point arise for determination. Findings and reasons for the same are as follow :

Sr. Nos.	POINT	FINDINGS
01	Whether the husband has shown grounds for cancellation/modification of the maintenance amount granted under Section 25 of the Hindu Adoption and Maintenance Act ?	In the negative.

REASONS

Point No.1 :

4 Appellant is the original petitioner – husband, who had filed petition under Section 25 of the Hindu Adoption and Maintenance Act for alteration/cancellation of the maintenance order passed in Petition No.C/8 of 2015 dated 24.10.2016, thereby granting maintenance @ Rs.6,000/- per month to the respondent.

5 In order to cut short, it can be said that both the sides have made submissions in support of their respective stand before the trial Court. The parties hereinafter are referred to as 'husband' and 'wife' respectively, for the sake of convenience.

6 The respondent – wife had filed petition for restitution of conjugal rights which came to be allowed by the Family Court on 24.10.2016 and it was further directed that the husband should take wife for cohabitation within two months from the date of the order and he should also pay maintenance @ Rs.6,000/- per month till re-union. Husband then contended that he along with his father and relatives went to the parental house of the wife on 05.11.2016 and 08.12.2016 to fetch the wife, however, the wife and her father did not open the door. Thereafter, husband issued legal notices dated 14.12.2016 and 30.12.2016 stating that he would take the wife from the Court premises on 19.01.2017 when the date for the case under Section 498-A of the Indian Penal Code was scheduled. Wife did not attend the Court on that day and, therefore, he had stated that wife is not willing to resume the cohabitation and, therefore, she has no right to get maintenance as directed. In the written statement all the allegations were denied. It is stated that after the restitution decree she had sent two letters to the husband requesting him to take her for cohabitation, however, those

have been returned with endorsement as insufficient address. In fact, the address was the same, however, the husband it appears that by misleading provided incorrect address. She expressed that she is ready to join the company of the husband. She had also filed pursis to that effect.

7 Issues were framed and both the parties have led oral evidence. Husband examined himself and also examined his relative Indrajeet Bhise, whereas wife examined herself.

8 The question was only as regards, whether there was genuine and serious efforts on the part of the husband to take the wife back for cohabitation as he had suffered the decree and was directed apart from taking the wife for cohabitation, to pay maintenance till re-union. It has been specifically observed by the learned trial Judge that though the husband claimed that he had issued two notices i.e. 14.12.2016 and 30.12.2016, he failed to produce copies of those notices. The contents in the said notices could not be ascertained, however, notice reply has been produced at Exh.45 and 46 by the wife. Thus, it can be seen that the husband though having possession of the documentary evidence, intentionally did not produce. Therefore, it cannot be said that there was genuine effort on his part. Thereafter, he as well as his witness say that in the month of November, 2016 they had gone to the house of wife's father but the iron gate of the compound

wall was closed. In spite of giving a call nobody opened the gate. Even if for the sake of argument it is accepted that they had gone to the house of the father of the wife and it was found closed; yet, they have not come with a case that they had given intimation that they would be coming on a particular day to fetch the wife. The possibility has been expressed by the learned trial Judge that the wife, her father and the relatives might have gone out of town cannot be ruled out appears to be a probable inference and only such one effort cannot be considered as a negative point for the wife.

9 Both the parties have then admitted that wife had filed execution petition i.e. Regular Darkhast No.9/2016 for execution of the decree for restitution of conjugal rights. They both were referred to Marriage Counsellor and thereafter consent terms were executed before the Marriage Counsellor on 26.07.2017. The husband in his cross-examination has admitted that in view of the compromise wife had joined his company at Pune. He has stated that he resides in a room admeasuring 8' x 8' situated in Sy.No.82 at Hadapsar, Pune. The said room had tin roof. He does not have a bed or fridge in the said room. Racks and kitchen platform is not available. The bathroom is also inside the room, however, the toilet is outside. There is a big Nala situated near the room. The learned trial Judge went on to consider that the petitioner is having salary of Rs.21,475/- in July, 2015.

Therefore, for a dignified survival the house which was taken by him was not appropriate. Even if we decide not to go into this aspect, the fact further remains is that the wife has stated that she was beaten by the husband to such an extent that it caused fracture injury to her. No doubt, she could not prove the medical document, however, there is no proper explanation on behalf of the husband as to why the wife had withdrawn his company when he admits that she had joined him at Pune. Since there appears to be no genuine efforts to have re-union, the wife is justified in staying with her parents. Under the said circumstance, there was no question of alteration in the maintenance amount. The decree has been passed properly and legally, which requires no interference. The point is, therefore, answered in the negative. Therefore, the appeal stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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