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906-ca-9290-23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CIVIL APPLICATION NO. 9290 OF 2023
IN SECOND APPEAL NO. 439 OF 2023

SAU JAYASHREE @ KHUSHABU NAPHADE
VERSUS
SANJAY DINKAR NAPHADE

...
Advocate for Applicant : Mr. Madhav M. Bhokarikar
Advocate for Respondent : Mr. D. B. Raswe
h/f. Mr. Chetan T. Jadhav
...

CORAM : Y. G. KHOBRAGADE, J.

DATE : 16.04.2024

PER COURT :

1. Heard both sides at length.
2. By the present application, the applicant / original defendant prayed for grant of interim maintenance of Rs. 30,000/- against the respondent husband during the pendency of this appeal.
3. Needless to say that, on 01.11.2018, the learned Joint Civil Judge (Senior Division), Nanded passed the judgment and decree in Marriage Petition No. 23/2016, holding that, vide order dated 02.12.2016 passed below Exhibit 13 in Marriage Petition No. 23/2016 the respondent wife / present appellant already getting interim maintenance to the tune of Rs. 10,000/- and considering the increase of cost of

commodities, the trial Court directed the present respondent / petitioner to pay Rs. 12,000/- per month towards periodical maintenance.

4. The learned counsel appearing for the respondent / original petitioner husband submitted that he has not served with the copy of present Civil Application.

5. It is submitted that the present application has been filed on 01.06.2023 and number of times this matter was appeared listed, however, till passing of this order, the learned counsel for respondent has never made any grievance about non-supply of copy of the Civil Application.

6. Per contra, the learned counsel appearing for the appellant submits that he has filed the present application online, therefore, the counsel for the respondent is very much aware about the pendency of this Civil Application and he could have taken print of Civil Application from the internet.

7. Since this Court already admitted the appeal on the substantial questions of law and under judgment and decree dated 1.11.2018 passed by the learned Civil Judge (Senior Division) the present respondent / original petitioner husband is under obligation to pay

periodical maintenance of Rs.12,000/- per month which has been reversed by the First Appellate Court.

8. In the case of ***Chandrika Vs. M. Vijaykumar, (1996) 2 Mad LJ 439*** observed as under :

“13. The learned counsel for the appellant finally contended that in spite of desertion by the wife, she is entitled maintenance for herself and for her child. The Court below rejected the request of the wife regarding maintenance on the simple ground that there has been no claim either for maintenance or for custody of the child. It is true that as per S. 25 of the Hindu Marriage Act, 1955, on application made to the Court either by the wife or by the husband, the court may pass an order of maintenance at the time of passing decree for divorce. Even though S.25 says that the maintenance amount has to be fixed on the basis of an application, even without an application, on the basis of oral request, it is open to the Court below to pass an order for maintenance to either party. In support of the above proposition, the learned counsel for the appellant relied upon Jaykrishna Panigrahi v. Surekha Panigrahi (AIR 1996 A.P. 19). In the said judgment, the Division Bench of the Andhra Pradesh High Court has held that

“Despite the dissolution of marriage at the instance of husband, it would also be a fit case to grant maintenance to the wife, even in absence of formal application before the court”.

In 1995 1 M.L.J. page 624 Chandra Rajan v. Radha alias Mahalakshmi Raju, J., while interpreting Ss. 24 and 25 of the Hindu Marriage Act, has held that,

“The provision of S. 25 confers an enabling power upon the court itself while granting divorce or judicial separation to also pass an order for the maintenance of the wife. The contemplated application as noticed supra to be made by such parties has to be limited and confined to the case when the court, while disposing of the main petition has not thought of passing an order for grant of maintenance and was silent on the said issue and not otherwise, becomes essential or necessary to separately make an application even when the Court chooses to decide about the same as part of the main petition, particularly as in this case by also disposing of simultaneously an application filed by the wife for maintenance along with main petition for divorce.”

In the said case an objection was taken that without an application for permanent alimony and maintenance the court has no power to order payment under S. 25. After reading the provisions contained in section 24 of the Act along side with S.25, Raju, J., has held that,

“The plea taken for the petitioner that unless a separate application is... be in during the course or at the time of passing the decree also filed for permanent alimony and maintenance, the Court could not have ordered for the payment under S. 25 of the Act is incorrect.”

We are also in entire agreement with the view expressed by the learned Judge in the said judgment. The conjoint reading of Ss. 24 and 25 of the Act clearly shows that during the disposal of the main petition for divorce, it is open to the Court to pass appropriate orders for alimony or maintenance even without any proper application. It is brought to our notice by the learned counsel for the appellant that during the course of arguments, both parties have filed written submissions before the Family Court for the convenience of the court. In the written submissions filed by the wife/respondent before the Family court, there is a specific plea for maintenance for herself and for her minor son aged about 11 years. We have also perused the same and the necessary contentions are there in para 6 of the written submissions filed by the wife. Hence, in view of the above fact as well as the law enunciated in the above referred decisions we are of the opinion that the wife and minor child are entitled for maintenance.

14. Regarding the quantum of maintenance, it is seen from the evidence of PW.1, that is, husband, that he was earning Rs. 2,500/- per month and he has also admitted that the wife is not employed anywhere. In view of the fact that the appellant/wife is not maintaining herself and her minor son aged 11 years and of the fact that the husband is earning a sizable amount, namely Rs. 2,500/- per month, we fix a sum of Rs. 500/- towards the maintenance of wife and another sum of Rs. 300/- per month towards the

maintenance of the minor child payable by the husband. At the end of the hearing, Mr. Sampathkumar, learned counsel for the respondent/husband, fairly requested that if the husband offers any amount towards necessary fees and expenses for the education of the minor child, he should be permitted by the wife. In as much as it is good gesture by the husband, we hope that there may not be any objection by the wife in this regard considering the welfare of the child.

15. *For all the above reasons, we confirm the decree of divorce passed by the Family Court dated 6.3.95 and grant a decree of maintenance of Rs. 500/- per month for wife and Rs. 300/- per month for minor child payable by the husband from the date of petition. To this extent, the decree of the Family Court is modified and in other respects, the same is confirmed. The C.M.A., is partly allowed as indicated above. No order as to costs.”*

9. Therefore, considering the existence of relations being wife and husband between the present appellant and the respondent, it would be just and proper to direct the respondent husband to pay Rs. 12,000/- per month periodical maintenance to the petitioner as per judgment and decree dated 01.11.2018 during the pendency of appeal.

10. Civil Application is accordingly disposed of.

(Y. G. KHOBRADE, J.)