



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 55 OF 2019

Jitendra Murlidhar Choudhari
Age : 47 yrs, occ : service
R/o A-11, Navprabhat Housing
Society, Hanuman Road, Vile
Parle (East) Mumbai.

Appellant
(original defendant)

Versus

Kusum Jitendra Choudhari
@ Kusum Dattaray Patil
Age : 37 yrs, occ : Advocate
R/o 5-B, Gurukul Colony,
Jalgaon.

Respondent
(original plaintiff)

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Mr. V.P. Latange, Advocate for the appellant.
Mr. Satej S. Jadhav, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Order Reserved on : 31.01.2024

Order pronounced on : 18.03.2024

Order :

1. The appellant-husband, who is the original in Regular Civil Appeal No.1076/2012, has challenged the judgment and order dated 02.08.2019 passed in the aforesaid appeal by the learned District Judge-2 at Jalgaon i.e. the learned first appellate Court, whereby the learned first appellate Court has remanded Regular Civil Suit No.435/2000 filed by the present respondent-wife for getting

maintenance under Section 18 (2) of the Hindu Adoptions and Maintenance Act, 1956 for fresh determination by setting aside its earlier dismissal dated 13.06.2012.

2. Heard rival submissions. Learned Counsel for the respondent – wife also filed written notes of arguments alongwith the citations annexed to it.

3. On perusal of the record, it appears that the respondent – wife had filed R.C.S. No. 435/2000 before the learned trial Court i.e. the Joint Civil Judge (Junior Division), Jaogaon for recovery of maintenance amount of Rs. 67,500/- for preceding one year. She also claimed future maintenance under Hindu Adoptions and Maintenance Act at the rate of Rs. 4,500/- per month. Judgment dated 13.06.2012 in the said suit indicates that the learned trial Court had dismissed the suit of the respondent-wife by relying on the judgments of this Court in the cases of *Panditrao vs Ganyabai, 2002 (SUPP) Bom.C.R. 664* and *Nagorao vs Ranjana, 2005 ALL MR 218*. As per the observations in those cases, the learned trial Court concluded that if there was divorce between the parties under the provisions of Hindu Marriage Act, then the wife cannot claim maintenance under Section 18 (2) of the Hindu Adoptions and Maintenance Act.

4. However, the learned first appellate Court has remanded the matter back by setting aside its earlier dismissal by observing that even if the marital tie was dissolved between the parties on 17.03.2005, that in itself would not preclude the appellant-wife for seeking relief of maintenance under Hindu Adoptions and Maintenance Act, at least for the period during which such tie subsisted. The learned first appellate Court has also observed further that even if it is found that the appellant-wife was not entitled in view of dissolution of her marriage, for seeking maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, her entitlement for such relief could have been examined in the light of provisions of Protection of Women from Domestic Violence Act, 2005 (for short, "Domestic Violence Act").

5. It is significant to note that the learned Counsel for the present appellant husband, during the course of argument, submitted that he is not having any grievance about remand of the matter back to the learned trial Court. Further, he is also not having any objection as regards reconsideration of claim of present respondent-wife under Section 18 (2) of the Hindu Adoptions and Maintenance Act,

at least for the period when her marriage was in existence with the appellant-husband. His grievance appears to be mainly in respect of the observation of learned first appellate Court whereby an opinion is expressed that the entitlement of wife could have been examined by the learned trial Court in the light of the provisions under Section 26 of the Domestic Violence Act. Learned Counsel for the appellant strongly opposed this observation and submitted that the learned first appellate court unnecessarily widened the scope of claim of respondent-wife. However, I would like to reproduce the aforesaid Section 26 of the Domestic Violence Act, as below :

“26. Relief in other suits and legal proceedings :

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief”.

On plain reading of the aforesaid section, it is clearly

evident that any relief available under Sections 18 to 22 of the said Act can also be sought in any legal proceeding before the Civil Court, Family Court and Criminal Court. Only caution is there, that the aggrieved person after obtaining any such relief in any proceeding other than the proceeding under this Act, is bound to inform the Magistrate of grant of such relief. As such, when dispute between the parties is still pending in the learned trial Court by way of impugned order of remand which is not disputed, there cannot be any bar for agitating such relief under the provisions of Domestic Violence Act in addition to claim under the provisions of Hindu Adoptions and Maintenance Act.

6. In the light of the aforesaid discussion, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)