



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH : NAGPUR**

CRIMINAL REVISION APPLICATION NO.129 OF 2023

- 1) Sau. Ashalata Niranjn Gawai
Age 67 yrs. Occ. Houswork
R/o Kishor Nagar, In the house of Shri.
Ogale, Kishor Nagar, Amravati
Tq. Dist. Amravati
(P.S. Fraizarpura Amravati)

.... Applicant(s)

// VERSUS //

- 1) Niranjn Pundlikrao Gawai
Age 70 yrs, Occu. Pensioner
R/o Hingaspure Nagar, Juna Baypass
Road, Amravati, Tq. Dist. Amravati
(P.S. Rajapth, Amravati)

.... Non-applicant(s)

.....
Ms Nazia Pathan, Advocate h/f Mr. S.V. Sirpurkar, Advocate for the
applicant

Ms A.R. Sharma, Advocate, Advocate, for the non-applicant
.....

CORAM : SANDIPKUMAR C. MORE, J.

DATE OF RESERVING THE JUDGMENT : 05.12.2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 06.12.2024

JUDGMENT :

1. The applicant-wife has filed this application, feeling aggrieved with the judgment and order dated 09.02.2023 passed by the learned Family Court, Amravati in Criminal Misc. Application

No.12/2018 filed by her for enhancement of maintenance amount granted to her, under Section 127 of the Code of Criminal Procedure. The learned Family Court has enhanced the maintenance amount granted to the applicant-wife only by Rs.1,500/- per month from the date of judgment.

2. The learned counsel for the applicant submits that the learned Family Court has definitely erred in granting such meagre amount as enhancement to the earlier maintenance amount by ignoring documentary evidence filed by the applicant-wife, showing as to how the husband is possessing the valuable properties. According to her, the applicant had claimed that the non-applicant/husband after retirement is getting pension of Rs.50,000/- per month, but the learned Family Court wrongly believed on the statement of the non-applicant/husband in his reply that he is only getting Rs.20,000/- per month as pension. Though she submitted that the applicant is also getting the maintenance amount of Rs.2,000/- per month under the Hindu Adoptions and Maintenance Act, 1956, but the present enhancement is not in consonance with the present

living cost. She pointed out that the non-applicant/husband is living with another lady and he is also having children from that lady. Thus, she prayed that considering the financial status of the non-applicant/husband, the learned Family Court should have granted maintenance of Rs.20,000/- per month to the applicant, who is not having any source of income.

3. On the contrary, the learned counsel for the non-applicant/husband supported the impugned judgment and pointed out that the enhancement is appropriate and the non-applicant/husband is now paying the aforesaid maintenance amount along with maintenance amount granted under the Hindu Adoptions and Maintenance Act, regularly. As such she prayed for dismissal of the revision application.

4. Heard rival submissions and also perused the documentary evidence on record along with the impugned judgment.

5. Admittedly, before filing the application in dispute, i.e. the Criminal Misc. Application No.12/2018, the applicant was getting maintenance at the rate of Rs.2,000/- per month. It is observed by

the learned Family Court that since the non-applicant/husband is retired person and getting pension of Rs.20,000/- per month only, the enhancement of earlier maintenance by Rs.1,500/- per month would be appropriate. The learned Family Court has also taken into consideration the amount of Rs.2,000/- per month granted as maintenance under the Hindu Adoptions and Maintenance Act for determination of enhancement.

6. It is not in dispute that the applicant is getting maintenance of Rs.2,000/- per month under the aforesaid Act separately, but it was alleged by the applicant that on retirement as a Range Forest Officer, the non-applicant gets pension of Rs.50,000/- per month. Further, she has also contended that amount near about Rs.50,00,000/- was received by the non-applicant towards retiral benefits and he also possesses big two storied house in Hingaspure Nagar, Amravati. It is extremely important to note that the applicant had filed so many documents showing the various properties acquired by the non-applicant/husband. However, not a single whisper is there in the impugned judgment in respect of the

same. It is to be noted that the learned Family Court, only based on the statements of the non-applicant in his reply, believed that he must be getting pension of Rs.20,000/- per month.

7. It is significant to note that the non-applicant did not lead any evidence and make himself available for cross-examination. The judicial note of the fact can be taken that on retirement, he must have got handsome amount as retiral benefits. Further the learned Family Court has literally ignored the documentary evidence adduced by the applicant in respect of the properties allegedly acquired by the non-applicant/husband.

8. Though the applicant is getting separate maintenance of Rs.2,000/- under the Hindu Adoptions and Maintenance Act, but the present maintenance granted in this proceedings of Rs.3,500/- also appears insufficient, considering the living cost now a days. Therefore, such meagre enhancement of Rs.1,500/- per month granted under the impugned judgment is not at all justified. Further, it is to be noted that such enhancement is granted by the Family Court from the date of the judgment and not from the date

of filing of the application i.e. 31.10.2018. Normally, the maintenance amount or enhancement amount of maintenance is to be granted from the date of application, unless certain special circumstances are recorded. In the instant case, nothing is mentioned by the learned Family Court as to why it granted the enhancement from the date of judgment and not from the date of filing of the application.

9. Thus, considering all these aspects and day to day living cost now a days, the aforesaid enhancement only of Rs.1,500/- needs to be increased, specially, considering the properties acquired by the non-applicant/husband. Accordingly, I pass the following order:

i) The judgment and order passed by the learned Family Court in Criminal Misc. Application No.12/2018 on 09.02.2023 is hereby modified and the non-applicant/husband is now directed to pay the amount of Rs.10,000/- per month towards maintenance to the applicant-wife and that too from the date of filing of the application i.e. 31.10.2018.

ii) The amount which is already paid as per earlier order during the aforesaid period, if any, be adjusted in the arrears of maintenance as per this new order.

iii) It is made clear that the aforesaid amount of maintenance of Rs.10,000/- is independent of the amount of maintenance of Rs.2,000/- per month granted to the applicant-wife under the Hindu Adoptions and Maintenance Act, 1956.

iv) The revision application is accordingly, **partly allowed** and disposed of.

SANDIPKUMAR C. MORE, J