



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

SECOND APPEAL NO.102/2020

Govind Haribhau Bawane,
Aged about 53 years, Occ. Labour.
r/o Nandura Bk., Tq. Dist. Amravati.**APPELLANT**

...V E R S U S...

Asha @ Panchfula Govind Bawane,
aged about 46 years, Occ. Household
Work, r/o Bori Arab, Durga Chowk,
Tq. Darwha, Dist. Yavatmal.**RESPONDENT**

Mr. C. A. Babrekar, Advocate for appellant.
Ms S. S. Kulkarni, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 07.01.2025

ORAL JUDGMENT

Heard Mr. C. A. Babrekar, counsel for appellant and
Mr. S. S. Kulkarni, Advocate for respondent.

2. The notice was issued on the following substantial
question of law.

*“Whether the lower appellate Court was justified in
granting maintenance to the respondent-wife
particularly when there was no cross objection filed
by the respondent-wife?”*

3. Admit. This question arises out of proceedings filed by
petitioner-husband under Section 13(1-A)(II) of the Hindu
Marriage Act, 1956 for divorce, being H.M.P. No. 418/2008.
Learned 3rd Jt. Civil Judge (Senior Division), Amravati was pleased

to partly allow the application and granted judicial separation instead of divorce. The said judgment dated 02.11.2011, was challenged by the husband before District Court in Regular Civil Appeal No.31/2012. The Appellate Court allowed the appeal and thus granted decree of divorce, subject to appellant depositing Rs.5,00,000/- towards permanent maintenance to respondent-wife.

4. Appellant is aggrieved by this finding of the First Appellate Court directing the appellant to deposit Rs.5,00,000/-. Learned counsel for appellant submits, and rightly so, that in absence of any proceeding seeking maintenance, the First Appellate Court ought not to have delved upon the aspect of maintenance. He has then invited my attention to the conduct of the wife, which is noted in paragraph 15 of the judgment. It appears that the wife has examined one person as witness DW3, who deposed that he is brother of the respondent-wife and the petitioner has deserted her and further continuously neglected and refused to perform his duties towards his wife and daughter. In the cross-examination, a specific suggestion was given that he (witness) is not brother of the respondent. The witness then agreed to place on record Election Card to show that he is brother of respondent but never appeared for further cross-examination.

5. This conduct, to my mind, speaks volumes about the respondent's approach before the Trial Court. There is every reason to believe that she has brought before the Court a person who was not her brother and made an attempt to mislead the Court by examining him as her brother.

6. The First Appellate Court, despite noting the aforesaid conduct and despite finding merit in the appeal filed by the husband, merely on the request made by the respondent's counsel, directed the husband to pay Rs.5,00,000/- towards permanent maintenance.

7. I am informed that the respondent had filed an application under Section 125 of the Criminal Procedure Code, 1973, seeking maintenance before the appropriate Court which was allowed. This application was filed in the year 1993. The Trial Court thought it proper to award maintenance at the rate of Rs.400/- per month. This fact, however, has been not disclosed by the respondent before the First Appellate Court. Thus, there is an additional reason to deprecate the conduct of the wife and thus to set aside the order of maintenance granted by the First Appellate Court.

8. In the circumstances, the First Appellate Court was not justified in granting maintenance to respondent-wife. Substantial question of law is accordingly answered in the negative.

9. Having answered the substantial question of law in the negative, following order is passed.

ORDER

- (i) Second Appeal is allowed.
- (ii) Judgment and order dated 08.03.2019, passed by District Judge – 4, Amravati in Regular Civil Appeal No. 31/2012, to the extent of granting maintenance of Rs.5,00,000/-, is quashed and set aside. Rest of the order stands intact.

No order as to costs.

(Anil L. Pansare, J.)

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