



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

SECOND APPEAL NO. 55 OF 2024
WITH
CIVIL APPLICATION (CAS) NO. 903 OF 2024

Sumanbai Tejrao Sarkate
Aged : 72 Years, Occu : Housewife, R/o
Pundlik Nagar, Ward No.16, Near Nirankari
Board, Chikhli, Tahsil Chikhli, District
Buldhana.

... APPELLANT

VERSUS

1. Tejrao Bhikaji Sarkate
Age : 75 Years, Occu : Retired, R/o Near
Post Office, Bhim Nagar, Mehkar, Tahsil
Mehkar, District Buldhana.
2. District Superintendent of Police
Office of the District Superintendent of
Police, Buldhana, Tahsil and District
Buldhana.

... RESPONDENTS

Mr. R. G. Kavimandan, Advocate for Appellant.
Mr. K. V. Deshmukh, Advocate for Respondent No.1.
None for the Respondent No.2.

CORAM : ROHIT W. JOSHI, J.
DATE : MAY 07, 2025.

ORAL JUDGMENT

. Heard Mr. R. G. Kavimandan, learned Counsel for the Appellant
and Mr. K. V. Deshmukh, learned Counsel for the Respondent No.1. None
present for the Respondent No.2, though served.

2. The Appellant is wife of the Respondent No.1. She had filed a proceeding under the provisions of Protection of Women from Domestic Violence Act, 2005 (*for short, 'the Act of 2005'*). In the said proceeding the Appellant/wife and Respondent No.1/husband has arrived at amicable settlement. In terms of compromise, the Respondent No.1 agreed to pay 50% of pension amount received by him to the appellant. The respondent No.1/husband also agreed to pay 50% of the amount of arrears of pension to the Appellant/wife. The terms were placed before the learned Courts and the proceeding came to be disposed of by an order passed by the learned Court disposing of the matter accepting the terms of compromise. Since the said compromise was not followed, the Appellant/wife filed a suit being Regular Civil Suit No. 215/2022 praying for declaration that she is entitled to receive the arrears of amount of pension and monthly pension in terms of the compromise and for perpetual injunction restraining the Respondent No.2 from disbursing amount of pension to the Respondent No.1/husband. The said suit came to be decreed vide Judgment and Decree dated 6/5/2023 passed by the learned 2nd Joint Civil Judge Senior Division, Buldhana.

3. The learned Civil Court held that the Appellant/wife was entitled to receive 50% of the amount of pension and dismissed the suit with respect to

the amount of retiral benefits, other than pension i.e. provident fund, gratuity etc.

4. The Respondent No.1/husband assailed this decree by filing appeal being Regular Civil Appeal No. 26/2023. The learned Principal District Judge, Buldhana has allowed the said appeal vide Judgment and Decree dated 21/11/2023 on the ground that the civil suit filed by the Appellant/wife was not maintainable.

5. Mr. Kavimandan, learned Counsel for the Appellant contends that right to receive maintenance is a civil right and a suit for enforcement of a civil right is certainly maintainable. He contends that the learned First Appellate Court has erred in holding that the suit was not maintainable.

6. *Per contra*, Mr. Deshmukh, learned Counsel for the Respondent No.1/husband contends that the order passed by the learned Magistrate in terms of compromise between the parties is an order passed under Section 20(1)(d) of the D. V. Act. and such orders passed are enforceable as per Section 20(6) of the said Act. Mr. Deshmukh, contends that the Act confers certain rights upon a woman and provides for remedies for enforcement of the rights. He contends that the Act is complete Code by itself, and therefore,

filing of suit under Section 9 of the Code of Civil Procedure is impliedly barred. Mr. Deshmukh places reliance on the Judgment of Delhi High Court in the case of *Anish Pramod Patel V/s Kiran Jyot Maini*, *AIR Online 2023 DEL 1346*. It is held in the said Judgment that orders of maintenance are enforceable under section 20(6) of the Act of 2005.

7. Having heard the respective Counsel on the point of maintainability of the suit, which is the sole point, on which the Appeal is allowed by the learned First Appellate Court, in my considered opinion, the learned First Appellate Court has not committed any error in holding that the suit was not maintainable. Under the provisions of D. V. Act, certain rights have been conferred upon a woman in domestic relationship. The Act also provides for remedies for enforcement of the rights. The Act also provides for an appeal against any order passed the learned Magistrate. Apart from this, the Act also provides for consequences for not complying with the judicial orders passed by the Court under the said Act. The Act is a complete Code by itself and in view of the scheme of the Act, jurisdiction of civil court is barred by implication. It needs to be mentioned that the suit filed by the plaintiff filed is in the nature of execution of order passed in her favour by the learned Magistrate in terms of the compromise arrived at between the parties in the D. V. Proceedings. It is well settled that the judicial authority has inherit powers

to enforce and execute orders passed by it. The suit filed by the appellant-wife therefore, is not maintainable.

8. As regards contention of Mr. Kavimandan that the right to maintenance is valuable civil right of the wife and suit for enforcement of such right is maintainable, the contention deserves to be rejected, since the suit is not for adjudication or claim with respect to any right of maintenance. In fact, maintenance is granted by the learned Magistrate, exercising powers under the D.V. Act. The appellant-wife was merely required to execute and enforce the order passed in her favour. This could be done by invoking Section 20 (6) of the D. V. Act. Even if it is held that, the suit is maintainable and the appellant succeeds in the suit, she will have to execute the decree that may be passed against her. This would cause further delay in enforcement of her right which is already accepted and granted by the learned Magistrate by passing an order under Section 20(1) of the D. V. Act.

9. In view of the aforesaid, no substantial question of law arises for consideration in the present Second Appeal. Keeping all remedies that are available in law open to the Appellant/wife for execution of the order passed by the learned JMFC in D.V. proceedings, the Second Appeal is dismissed with no order as to costs.

10. Having regard to the fact that right of maintenance to the Appellant-wife is involved, although the Appeal is dismissed, the Respondent No.1/husband is restrained from withdrawing any amount of pension, which is deposited in his bank account for a period of two months from today. The Appellant/wife is at liberty to take appropriate steps for execution of the order accepting compromise passed in her favour in D.V. proceedings, in accordance with law. The Civil Application No. 903/2024 is, accordingly, disposed of.

(ROHIT W. JOSHI, J.)

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