

(1998) 07 BOM CK 0089

Bombay High Court (Nagpur Bench)

Case No: Appeal Against Order No. 59 of 1997

Rajesh Nanaji Morghade

APPELLANT

Vs

Darshana Rajesh Morghade and
another

RESPONDENT

Date of Decision: July 18, 1998

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 18, 20

Citation: (1999) 1 ALLMR 87 : (1999) 3 BomCR 99 : (1999) 1 CivCC 453 : (1999) 1 DMC 517 :
(1999) 1 MhLj 327

Hon'ble Judges: D.D. Sinha, J

Bench: Single Bench

Advocate: A.R. Patil, for the Appellant; S.P. Kshirsagar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.D. Sinha, J.

The respondent No. 1, i.e., Smt. Darshana w/o Rajesh Morghade, filed Petition No. C-20/96 under sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the Act), before the Family Court at Nagpur, in which she claimed maintenance for herself and respondent No. 2, i.e., her son, to the tune of Rs. 20,000/- per month, from the appellant. It is the case of the respondent No. 1 that on 25-12-1994, she got married to the appellant as per the Hindu rites and customs. The respondent No. 1 thereafter was residing with the appellant at his place at New Shukkarwari, Nagpur. The respondent No. 1 initially after marriage was being treated well by the appellant/husband for few days. Mother and sisters of the appellant thereafter started ill-treating the respondent No. 1. The ill-treatment was on account of non-payment of adequate dowry in the marriage. The respondent No. 1 became pregnant in the year 1995 and the fact of pregnancy has been communicated by her to the appellant. It is the case of the

respondent No. 1 that the appellant insisted upon terminating the pregnancy. Since the respondent No. 1 refused to oblige the appellant, the appellant gave her beating and abused her in filthy language. In spite of the ill-treatment and harassment meted out to the respondent No. 1 by the appellant, the respondent No. 1 gave birth to a male child who is present respondent No. 2. It is the case of the respondent No. 1 that her life became miserable because of the ill treatment meted out to her by the appellant. The appellant ultimately has driven her out from the house on 17-4-1996 and she thereafter was forced to live with her parents. It is further the case of the respondent No. 1 that she is from a respectable middle class family. The appellant is the owner of one wine-shop and is a partner in two Liquor Bars situated in Nagpur. He is also owner of a house namely, Morghade Bhavan Mahal, Nagpur and receives Rs. 6,000/- per month by way of rent of the said house. The income from the Bars and Wine shop is about 44,000/- rupees per month. The total income of the appellant, according to the respondent No. 1, is Rs. 50,000/- per month and, therefore, she claimed Rs. 20,000/- per month as maintenance for herself and her son. The above-referred petition is pending on the file of the Family Court, Nagpur, for adjudication and decision.

2. The respondent No. 1, during the pendency of the above-referred petition, filed an application, bearing Application No. 32/96, for grant of interim maintenance and the Judge, Family Court, Nagpur, vide order dated 16-5-1997, allowed the said application for grant of interim maintenance and directed the appellant to pay interim maintenance of Rs. 5,000/- to the respondent No. 1 and Rs. 1,500/- to the respondent No. 2 per month. Being aggrieved by the said order, the appellant preferred the present appeal against order.

3. Shri A.R. Patil, learned Counsel for the appellant, contended that the appellant has never ill-treated his wife/respondent No. 1, nor is there any neglect on his part; he is willing and ready to maintain the respondent No. 1. It is further submitted that the appellant has no source of income. On the other hand, the respondent No. 1 is a Graduate and can get employment anywhere. It is contended by the learned Counsel that the respondent No. 1 herself has withdrawn from the company of the appellant and, therefore, she is not at all entitled to any maintenance as claimed by her in her original Petition No. C-20/96, nor is she entitled for any interim maintenance. It is submitted that the appellant is ready and willing to maintain the respondent No. 2. The Counsel for the appellant submitted that the applicant is not the owner of any Wine Shop or Liquor Bars, as alleged by the respondent No. 1. However, the appellant's mother is having a house in Mahal area of Nagpur. The learned Counsel for the appellant further submitted that the appellant is not earning Rs. 44,000/- per month, as alleged by the respondent No. 1, nor is he receiving Rs. 6,000/- as rent from the house property. The learned Counsel contended that the Court below, while granting the interim maintenance, lost sight of these vital circumstances and, therefore, the impugned order is not proper. He further submitted that the Family Court erroneously held that the appellant is

having 1/3rd share in the income of his mother, without there being any evidence to that effect brought on record by the respondent No. 1. The learned Counsel, therefore, submitted that the order of interim maintenance passed by the Judge, Family Court, Nagpur, is not sustainable in law.

4. The learned Counsel for the appellant, alternatively, submitted that there was a settlement arrived at between the parties and as per the Settlement Deed; annexed as Annexure-F to the present appeal against order, it was decided that the appellant will pay interim maintenance of Rs. 1,000/- per month to the respondent No. 1 and Rs. 500/- per month to the respondent No. 2 the total interim maintenance of Rs. 1,500/- per month, by cheque, on or before 10th of each month. The learned Counsel for the appellant further submitted that there are other stipulations also in the above-referred Settlement Deed. The learned Counsel contended that while passing the impugned order, the Family Court did not take into consideration the above-referred Settlement Deed and, therefore, the impugned order of maintenance is not sustainable in law.

5. On 2nd July, 1998, the learned Counsel for the appellant requested this Court to permit the appellant to amend the Appeal Memo by adding some more legal grounds. Since the learned Counsel for the respondents had not objected to it, this Court had allowed the request of the appellant and, therefore, the appellant raised additional legal grounds, i.e., Ground Nos. 11-A, 11-B, 11-C, 11-D and 11-E. The main contention of the appellant, in view of the additional grounds, appears to be that under the Act, there is no provision which provides for grant of interim maintenance, since there is no provision in the Act itself. It is further submitted by the learned Counsel that the suit, in which the very claim of the maintenance is in contest and there being no power under the Actor statute which expressly confers such a power, the trial Court ought to have rejected the application for interim maintenance.

6. This Court, vide order dated 1st August, 1997, issued notice Before Admission and also granted interim stay, on condition that the appellant should deposit before the lower Court the arrears at the rate mentioned in the Settlement Deed (Annexure-F) from the date of institution of the petition before the lower Court till 1st of August, 1997, within a period of one month. It was also observed in the same order that on deposit of the said amount by the appellant, the respondent No. 1 shall be free to withdraw the same and the appellant was also directed to continue to pay the maintenance at the said rate as and when falls due. Thereafter, the present Appeal was listed for admission on 20-11-1997, and this Court on that day passed the following order:

"Heard the parties. Admit. No stay."

7. Since this Court did not grant stay as prayed for by the appellant, the appellant, preferred SLP No. 999/98 before the Apex Court against the order dated 20-11-1997

passed by this Court, whereby this Court has refused to stay the effect, operation and implementation of the order of the Second Family Court at Nagpur, dated 16-5-1997, passed in Petition No. C-20/96. The Honourable Apex Court on 29-1-1998 passed the following order :

"Issue notice limited to the question whether pending the appeal before the High Court ad interim relief could have been granted in the light of the agreement said to be entered into between the parties as annexed at page 30 of the SLP and a copy of which was produced before the High Court earlier and was considered while passing ad interim order dated 1-8-1997 in the very same appeal. Notice shall be issued to the respondent No. 1 only on the petitioner depositing Rs. 5,000/- for defraying the travelling expenses of respondent No. 1. Once she appears pursuant to the notice, the said amount will be forthwith paid to her. The said amount will be deposited within two weeks from today. Thereafter, notice will be issued to the respondent No. 1 returnable after four weeks.

Ad interim stay of the order of maintenance subject to the condition that the petitioner in the meantime will continue to pay maintenance to the respondents at the rate of Rs. 1500/- per month as per the settlement produced at page 30.

No order on I.A. No. 1 for the present.

To be placed after six weeks."

8. The Apex Court thereafter on 5th day of May, 1998, dismissed the SLP preferred by the appellant, by passing the following Order:-

"As this SLP is against an interim order of the High Court in an appeal which is itself against an interim order passed by the trial Court, we are not inclined to interfere with the impugned order under Article 136 of the Constitution. However, we request the High Court to make it convenient to dispose of the appeal against the interim maintenance order as expeditiously as possible preferably by the end of August, 1998. Subject to this request, the SLP is dismissed. Office will send a copy of this order to the Registrar of the High Court of Mumbai at Nagpur Bench for being brought to the notice of the Hon"ble Chief Justice of the High Court for doing the needful. In the meantime, without prejudice to the rights and contentions of the parties, the petitioner shall pay the difference of the maintenance amount as awarded pursuant to the impugned order as not staying the order under appeal at least from 1-1-1998 and will also continue to pay the maintenance amount of Rs. 6,500/- from today onwards regularly to the respondents. This will be subject to the result of the appeal and without prejudice to the rights and contentions of parties in the pending appeal. The arrears of maintenance amount shall be deposited on or before 10-6-1998. The deposited amount will be permitted to be withdrawn by the respondent-wife."

9. In view of the above referred directions of the Honourable Apex Court, the instant appeal against order has been taken up for final hearing.

10. The learned Counsel for the respondents submitted that the appellant is a businessman and has share in the Wine Shop and two Liquor Bars, viz., Surya Bar and Lava Bar, at Nagpur. It is further submitted that the appellant possesses his own house and is receiving about Rs. 6,000/- per month as rent of the said house. It is submitted that the income from the Wine Shop and two Liquor Bars is to the tune of Rs. 44,000/-. The Counsel for the respondents submitted that the total income of the appellant comes to Rs. 50,000/- per month. The learned Counsel further contended that in view of the facts and circumstances of the present case, particularly taking into consideration the income as well as the status of the appellant, the respondents are entitled to receive interim maintenance at the rate of Rs. 15,000/- per month.

11. It is contended by the learned Counsel for the respondents that after the death of appellant's father, there was a property arrangement made in the appellant's family. The copy of the said family arrangement, dated 21st March, 1988 was placed on record before the Court below. It is submitted that the property agreement/arrangement is executed on a stamp paper and is signed by all the family members in the year 1988. It is contended by the Counsel for the respondents that half share in the house property, (bearing House No. 168) in old Ward No. 8, New Shukkarwari, Nagpur, came to the appellant/husband and he is receiving half of the rent from the tenants of the said property. It is further argued that though the liquor licence is in the name of mother of the appellant, the appellant has 1/3rd share in the income which she receives from the said Wine Shop. It is also submitted that a Maruti Van, bearing Registration No. MH 31 G-2333 was purchased by the appellant on 7-6-1996 and is registered in his name. It is also specifically stated that the appellant is managing Lava Bar and Surya Bar and is getting substantial income from these Bars. It is further stated that the partition-deed, which is filed on record, shows that all the family members of the appellant are having their independent properties and are receiving income from the same, and the appellant also does not have any dependent and, therefore, it is submitted that the impugned order regarding interim maintenance passed by the Court below is sustainable in law. It is brought to my notice by the Counsel for the respondents that the so-called Settlement Deed referred to by the Counsel for the appellant never came into existence.

12. It is further submitted that the Marriage Counselor, Smt. S.S. Kapile, who was appointed for the purposes of bringing about the reconciliation between the appellant and the respondent No. 1, vide her opinion dated 28-12-1996, informed the Judge, Family Court No. 1 at Nagpur that she has interviewed the appellant and the respondent No. 1 individually and jointly and came to the conclusion that there are no chances of reconciliation between the parties. An amicable settlement is also

not possible. The learned Counsel for the respondents, therefore, submitted that the Court below was right in not taking into consideration the alleged Settlement Deed annexed by the appellant at Annexure-F to this AO.

13. The learned Counsel for the respondents submitted that the contentions raised by the appellant in the additional grounds are also not legal and sustainable.

14. I have carefully considered the contentions raised by the learned Counsel for the appellant as well as the respondents and also perused the impugned order passed by the Court below. The perusal of the impugned order shows that the respondent No. 1 filed the copy of family property arrangement/family arrangement deed executed on 21st March, 1988, wherein it has been shown that the appellant is having share in the family property as mentioned in the family arrangement deed. It is pertinent to note that the appellant has not denied the existence of the above-referred family arrangement deed, dated 21st March, 1988, nor has placed any other material on record to show that he is, in no way, connected with the property shown in the above-referred family arrangement deed. The Court below, in my opinion, has rightly accepted the contention raised by the respondents that the appellant is having share in the family property as mentioned in the family arrangement deed. It appears that as per the family arrangement deed, the appellant is having 1/3rd share in the liquor business which is in the name of his mother and is receiving substantial rent from the above referred house. In that view of the matter, the Court below rightly came to the conclusion that the income of the appellant must be about Rs. 20,000/- per month. It is also necessary to take into consideration that the respondent No. 1, being the legally wedded wife of the appellant, is also entitled to enjoy and maintain the same status as that of the appellant and is also entitled to maintain the same standard as that of her husband (the appellant). In that view of the matter, the reasoning given by the Court below for passing the impugned order does not suffer from any infirmity on merits of the case and, therefore, the contention raised by the learned Counsel for the appellant in this regard suffers from lack of merit.

15. I have considered the contention raised by the learned Counsel for the parties in respect of the Settlement Deed (Annexure-F to this AO). As already stated hereinabove, the Marriage Counselor, Smt. S.S. Kapile, who was appointed for the purposes of bringing about the conciliation between the parties to this AO, by her written opinion, dated 28-12-1996, communicated to the Family Court at Nagpur that she has interviewed the appellant and the respondent and came to the conclusion that there are no chances of reconciliation between the parties and settlement between the parties is also not possible. In that view of the matter, I am of the opinion that the consent terms regarding interim maintenance arrived at between the parties, dated 17-9-1996, did not reach finality, which is evidenced from the opinion dated 28-12-1996 expressed by the Marriage Counselor, Smt. S.S. Kapile and, therefore, in my opinion, failure to consider the alleged consent terms of the

Settlement Deed annexed as Annexure-F to this AO, by the Court below, does not affect the propriety and legality of the impugned order nor, in the circumstances of the case, it can be said that any prejudice is caused to the appellant. Therefore, the contention raised by the appellant in this regard cannot be accepted.

16. The contention raised by the learned Counsel for the appellant that there is no provision in the Act which provides for grant of interim maintenance pending decision of the suit and, hence, the trial Court has no power to grant interim maintenance, is not based on sound footing and also suffers from lack of merit, in view of the judgment of this Court reported in [Madhukar Akhand Vs. Bhima Akhand and Others](#), . In para-10 of the above referred judgment of this Court, this Court has observed as under :--

"It is a settled position in law that where the principal power or main right to grant relief is conferred upon the Court or upon an authority, such Court or authority has also powers to grant those and such reliefs which are incidental to the main relief."

This Court, in para-12 of the above referred judgment observed thus :--

"In view of what I have observed above, it seems to me that the right to grant interim relief flows from the substantive right in sections 18 and 20 themselves and if not, section 151 can be called in aid to translate that right into practice and actual relief. The power to grant such a relief is incidental and ancillary to the power to grant final maintenance both under sections 18 and 20."

17. It is, therefore, in my opinion, clear that where the principal power to grant relief asked for is conferred upon a Court, such Court will also have power to grant such interim reliefs which are incidental to the main relief. In the instant case, the respondents filed a petition under sections 18 and 20 of the Act before the Family Court for maintenance and same is pending for adjudication before the said Court. Since the Court has a power under sections 18 and 20 of the Act to grant maintenance, which is the final relief sought by the respondents, then by necessary implication, the Court will also have power to grant interim maintenance which is incidental to the main relief of maintenance claimed by the respondents. In view of this legal position, the contention raised by the Counsel for the appellant, on the basis of the additional legal grounds, suffers from lack of merits and cannot be accepted. Consequently, the impugned order, in my opinion, does not suffer from lack of jurisdiction and the same is just and proper and also sustainable in law.

18. For the reasons stated above, no case is made out for interference. The Appeal against Order is dismissed. No order as to the costs.

19. Appeal dismissed.