

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2527 OF 2021

Bhagyashri w/o. Jagdish Jaiswal .. Petitioner

Vs.

Jagdish S/o. Sajjanlala Jaiswal & Anr. .. Respondents

...

Mr. S.S. Thombre for the petitioner.

Mr. Rajesh Mewana for respondent No1.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 26TH FEBRUARY, 2022.

P.C:-

1. The petitioner-wife is aggrieved by the order passed by the 2nd Joint Civil Judge, Senior Division, Nanded, dated 08/08/2017 and also by the order dated 06/12/2019 passed below Exh.-23 in the very same proceedings. The impugned orders are assailed in the backdrop of the common fact that the said orders are not sustainable, since the relationship between the husband and wife is already extinguished by a decree of divorce passed on 17/01/2015.

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2. The marriage between the petitioner and the respondent was solemnized on 17/04/1992 and, on the wife filing a petition under Section 13 of the Hindu Marriage Act, 1955 (for short, **“the Act of 1955”**) seeking dissolution of marriage on the ground of cruelty and desertion, the petition was allowed and the marriage between the parties came to be dissolved on 17/01/2015 by the 2nd Joint Civil Judge, Senior Division, Nanded. The decree of divorce was directed to be drawn accordingly.

3. Since I am not concerned with the merits of the said decree, I do not delve deep into it.

After passing of the decree of divorce, the respondent-husband filed Hindu Marriage Petition No.46 of 2015 claiming for grant of permanent alimony from the petitioner-wife at the rate of Rs. 15,000/- per month. This application being filed under Section 25 of the 1955 Act, pleaded that since the marriage being dissolved by a decree of divorce, the application is filed as the respondent-husband is not having any source of income and the petitioner-wife, on the contrary had acquired the educational qualification of M.A., B.Ed. and, on completion of education, is serving at Shri Datta Mahavidyalaya, Talni, Taluka Hadgaon. It is specifically pleaded that in order to encourage the wife to obtain the degree, the husband managed the household affairs, keeping aside his own ambition. It is pleaded that prior

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to her employment, she was taking tuition classes and earning income for the family. The respondent-husband claims that he was working with the father of the petitioner-wife at Manatha and, with the aid and assistance of her parents, he would contribute some amount for the well being of the family.

4. The respondent-husband pleads that he suffered humiliation and harassment in the marital relationship as the petitioner-wife, with a malafide and dishonest intention, filed petition for divorce, which was decreed. It is specifically pleaded that the respondent is neither doing any job, nor does he possess any moveable or immovable property or has any independent income. It is also pleaded that he is also not keeping good health and unable to secure any job for earning his livelihood. As against this, the petitioner-wife earns a salary of Rs.30,000/- per month and also possesses valuable household articles and immovable properties.

5. In the backdrop of the aforesaid averments in the petition, the respondent-husband claims maintenance of Rs.15,000/- per month from the wife, from the date of filing of the petition. The prayer in the said petition reads as under:

“1. That the respondent may be directed to pay permanent alimony / maintenance to the petitioner at the rate of Rs. 15,000/- per month from the date of filing of this Petition.

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2. The charge of maintenance to be created on the salary of respondent.”

6. In the said marriage petition, an application is filed by the respondent-husband under Section 24 of the 1955 Act, claiming maintenance pendente lite, the application being registered as Exh.-14.

In the said application, interim maintenance, till disposal of the main proceedings filed by the respondent-husband under Section 25 of the 1955 Act, claiming permanent alimony / maintenance, is sought.

7. The claim of the husband was strongly opposed by the petitioner-wife, by submitting that the husband is running a grocery shop and he also owns an auto rickshaw and earns income by leasing out the same. It is denied that the husband is dependent upon the wife and it is specifically pleaded that there is a daughter born out of the wed-lock, who is dependent on the wife and, therefore, the claim of maintenance by the husband is prayed to be rejected, with costs of Rs.10,000/-.

8. The application filed vide Exh.-14, claiming interim maintenance, is allowed by the 2nd Joint Civil Judge, Nanded, on 08/08/2017 by the following order:

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“The respondent is hereby directed to pay Rs.3,000/- per month (Rs. Three Thousand only) to the applicant towards maintenance pendent lite from the date of application till disposal of the petition.”

9. While passing the above order, the learned Judge records that, since the proceedings filed under Section 25 of the Act of 1955 are pending, the application under Section 24 is maintainable and by relying upon the facts and figures presented and by recording that whether the applicant-husband is entitled for claiming permanent alimony from the respondent-wife, will be decided on merits during trial, the application claiming interim maintenance, came to be granted.

10. Another order assailed before me, is passed below Exh.-23, which takes the earlier order passed by the learned Judge on 08/08/2017 forward, in the wake of the request of the respondent that a warrant for recovery of arrears may be issued against the petitioner-wife and the amounts due and payable, be deducted from her salary and deposited before the court.

The application is granted on 06/12/2019, with the following order:

“1) Issue letter to the Headmaster of Shri Datta High School, Talni, Tq. Hadgaon, Dist. Nanded to deduct Rs.5,000/- from monthly salary of respondent and send said amount to this court per month till further orders towards

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recovery of arrears of maintenance pendent lite.”

Both the above orders are subject matter of challenge in the present writ petition.

11. Heard the learned counsel Mr. Tombre for the petitioner-wife, who would submit that since the marriage between the petitioner and the respondent is dissolved by a decree of divorce, the proceedings for permanent alimony and maintenance under Section 25 of the Act of 1955, are not maintainable and by referring to the wording used in the said section - “*husband or the wife*”, the submission advanced is, on dissolution of marriage, no such application can be entertained. The learned counsel would further submit that by directing the wife to pay maintenance to the husband after dissolution of marriage by a decree of divorce, would amount to traversity of justice and once the relationship between the husband and wife is severed by a decree of divorce, there cannot be any claim made by anyone of them against each other.

Per contra , the learned counsel Mr. Mewana would submit that the provision contained in Section 25 of the Act of 1955 do not depend upon the outcome of the relationship subsequent to divorce, since the section use the word “*at any time subsequent thereto*” and therefore, the embargo that the applicant as the husband, after dissolution of marriage cannot

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be denied, the benefit flowing from Section 25 of the Act of 1955.

12. At the outset, I must state that the impugned orders have been passed by the learned judge on an application filed under Section 24 of the Act of 1955, claiming maintenance pendente lite. Section 24 of the Act of 1955 reads thus:

24. Maintenance pendente lite and expenses of proceedings. - *Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:*

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

By reading of the aforesaid, it is clear that the application can be filed under Section 24 of the Act of 1955, in the pending proceedings under the Act and it may cover proceedings under

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Section 25 of the Act of 1955 for permanent alimony and maintenance.

13. Section 25 of the HM Act, which is the provision for permanent alimony and maintenance, reads thus:

“25. Permanent alimony and maintenance.-(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is

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the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”

14. A conjoint reading of both the provisions, would reveal that both the sections in the Act of 1955 are enabling provisions and confer a right on the indigent spouse to claim maintenance either pendente lite or in the nature of permanent alimony and maintenance.

15. The words applied in Section 25 of the Act of 1955 permit any court exercising jurisdiction under this Act, i.e. under Sections 9 to 13, at the time of passing any decree or at any time subsequent thereto, on an application made to it, by either of the spouse pay to the applicant for her/his maintenance, either gross sum or monthly or periodical sums for not exceeding the life of the applicant, having regard to the income and the other property, etc. The term used “*at any time subsequent thereto*” cannot be made redundant, by giving constricted meaning to the words “*wife or husband*”, applied in Section 25 of the Act of 1955 and this can be said so, in the wake of sub-sections (2) and (3) of Section 25, which empower the court to vary, modify or rescind the amount of permanent alimony and maintenance as awarded under sub-section (1) and, on existence of the

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circumstances set out in sub-section (3), order granting permanent alimony and maintenance can be varied and modified or rescinded as the court may deem just and proper.

Sub-sections (2) and (3) of Section 25 are thus indicative of the fact that if at the time of decree, an application is made or at any subsequent time of the passing of the decree, an application is made, claiming maintenance by either of the spouse, the court is empowered to grant the claim, which is just and proper and the payment can be secured if necessary, by creating charge on the immoveable property of the respondent. If sub-section (1) is given a restrictive meaning as attempted to be canvassed by Mr. Thombre, then the words used “*at any time subsequent thereto*” would become redundant, which cannot be the intention of the legislature. The legislature does not use the words in vacuum and when it specifically permits the exercise of power of granting permanent alimony and maintenance on the court exercising jurisdiction under the Act, at the time of passing of the order or at any time subsequent thereto, it is open for the court to grant such maintenance at the time of passing the decree or even subsequent to the decree being passed. The provision cannot be read to constrict it, if the relationship between the husband and the wife is severed and as per Mr. Thombre, on divorce, they no longer remain husband and wife. Section 25 is not only restricted to a decree of divorce, but the decree can also be for restitution of conjugal rights under Section 9, the decree can also be for judicial separation under Section 10 or the decree

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can also be for divorce under Section 13 or the decree can also be for a divorce by mutual consent under Section 13B. In the contingency other than the one covered by a decree of divorce, the parties are still husband and wife, when a decree for restitution of conjugal rights or judicial separation is passed. The scope of Section 25, therefore, cannot be restricted by holding that on divorce / dissolution of marriage, the wife or the husband cannot bring such proceedings.

16. The provision of maintenance / permanent alimony being a beneficial provision for the indigent spouse, the said section can be invoked by either of the spouse, where a decree of any kind governed by Sections 9 to 13 has been passed and marriage tie is broken, disrupted or adversely affected by such decree of the court. The scope of Section 25 of the Act of 1955 cannot be constricted by not making it applicable to a decree of divorce being passed between the husband and wife.

The Hon'ble Apex Court in case of **Chand Dhawan v. Jawaharlal Dhawan**¹, took note of divergent opinions, in respect of the words applied in Section 25- "*at the time of passing any decree or at any time subsequent thereto*" and recorded as under:

"6. Right from its inception, at the unamended stage, the words "at the time of passing any decree or any time subsequent thereto" posed difficulty. The majority of the High Courts in the country

1 (1993) 3 SCC 406



took the view that those words indicated that an order for permanent alimony or maintenance in favour of the wife or the husband could only be made when a decree is passed granting any substantive relief and not where the main petition itself is dismissed or withdrawn. It was also gathered that if no request for alimony was made at the time of passing the decree the same relief could be sought subsequently on an application. The relief of permanent alimony was deduced to be ancillary or incidental to the substantive relief, and it was given to the party to whom such relief was due. The expression "any decree" was viewed to have been used having regard to the various kinds of decrees such as decree for Restitution of Conjugal Rights, Judicial Separation, Nullity of Marriage, and Divorce, which could be passed either on context or consent."

17. After referring to the various decisions from the High Courts, interpreting the aforesaid terminology in paragraph No.23, the Apex Court has observed as under:

"On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by

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passing a decree for or against her. On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change" or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or; disputed by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus."

18. In the wake of the above observations, since Section 25 has to be looked upon as a provision for destitute wife/husband the provisions will have to be construed widely so as to salvage the remedial intailments, the contention of the learned counsel cannot be accepted and it is open for the court to decide the

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application filed by the husband under Section 25 of the 1955 Act, seeking monthly maintenance, by way of final proceedings, pending which, the application for interim maintenance filed under Section 24 of the Act of 1955, has been rightly entertained by the learned Judge and the husband has been held entitled to interim maintenance while the proceedings under Section 25 are pending.

19. Both the impugned orders do not warrant any interference and, by upholding the same, the writ petitions are dismissed.

[SMT. BHARATI DANGRE, J.]

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