

UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

FAMILY COURT APPEAL NO.01 OF 2016

1. Sau.Deepali S/o Dnyaneshwar
Sonwane, Parental Name Ku.Deepali
D/o Shanraj Jadhav, Age 29 years,
Occ.Household, Residing at C/o
Shri Dhanraj S/o Bhaidas Jadhav,
District Veternary Hospital,
Khadkeshwar, Aurangabad.

2. Unatti @ Pari d/o Dnyaneshwar
Sonwane, Age 3 years, Minor
Under Guardian - Appellant No.1. ... Appellants.

Versus

Dnyaneshwar S/o Jatan Sonwane,
Age 31 years, Occ.Teacher,
Residing at C/o Headmaster,
Zilla Parishad, Primary School,
Kokadda Taluka Dhadgaon,
District Nandurbar. ... Respondents.

...

Mrs.V.A.Shinde, advocate holding for Mr.Hemant
Surve, advocate for the Appellants.
Mr.R.S.Deshmukh, advocate for the Respondent.

...

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

Date : 29.07.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Record and proceedings has been received. We have heard the matter finally with the consent of the parties.

2. The present appellants had filed an application U/s 18 and 20 of the Hindu Adoptions and Maintenance Act, claiming maintenance against the Respondent, who is the husband of appellant No.1 and father of appellant No.2. The appellants had claimed maintenance of Rs.20,000/- p.m. (Rupees twenty thousand). The Family Court, Aurangabad, partly allowed the said petition and directed the present Respondent to pay maintenance of Rs.3,000/- p.m. (Rupees three thousand) to the appellant No.1 and Rs.5,000/- p.m. to the appellant No.2 from the date of the said order. The present appeal is filed seeking enhancement of the said amount of compensation.

3. The learned counsel for the appellants submits that the Respondent is a Teacher in the School. The salary certificate for the month of March and April 2014 is produced on record which shows the gross salary as on the said date to be Rs.31,890/- (Rupees thirty one thousand eight hundred ninety). The said salary would be ever increasing. The Respondent also has an agricultural land to the extent of 1 hectare 87 Ares. The same is a Bagayat land. The Respondent gets income from the agricultural land also. The appellants had prayed for a reasonable amount of compensation of Rs.20,000/- (Rupees twenty thousand) p.m. The learned counsel further submits that appellant No.2 is minor, taking education. The amount is required for her education and also maintenance. The learned counsel submits that appellants are entitled for the standard of life commensurate with that of the Respondent. The appellant No.1 the wife of the Respondent is house-wife and is not earning any amount.

4. Mr.Deshmukh, learned counsel for the

Respondent submits that in fact, before the Family Court the assistance of advocate was not made available to the parties. There is no cross-examination to the appellant or the Respondent. The Respondent be given opportunity to cross-examine the appellant. The learned counsel further submits that the agricultural land is jointly owned by the Respondent along with mother and the other two brothers. The Respondent has the responsibility to maintain the mother and also perform the marriages of his brothers as the Respondent is eldest in the family. According to the learned counsel, maintenance of Rs.8,000/- (Rupees eight thousand) p.m. granted by the Family Court is also exorbitant. Actually it is the appellant who has withdrawn from the company of the Respondent without any reasonable cause.

5. We have considered the submissions of the learned counsel for respective parties, so also have gone through the judgment and record and proceedings. The petition was for maintenance only and from the documentary

evidence itself, the case can be decided. The oral evidence may not play pivotal role in deciding the matter. The salary certificate of the Respondent is on record which shows that the Respondent was drawing monthly salary in March/April 2014 of Rs.31,890/- (Rupees thirty one thousand eight hundred ninety) and after deduction, his take home salary was Rs.29,438/- (Rupees twenty nine thousand four hundred thirty eight). The same was two years back, with addition of D.A. Naturally, the same would increase. Be that as it may, even we take the salary of the Respondent as shown in the salary certificate of March/April 2014, the amount of maintenance awarded would be on the lower side. Even accepting the case of the Respondent that he has to maintain his mother, still, the amount of maintenance awarded by the Family Court would be on lower side. The appellant No.2 i.e. the daughter is a growing child, naturally, her need would increase along with educational expenses and the appellants are entitled for the standard of living commensurate with that of the Respondent. There is nothing on record to even

remotely suggest that the appellant No.1 - the wife is in a position to do any avocation. In the result, we pass the following order :

a) The appeal is partly allowed. The order passed by the Family Court is modified to the extent that Respondent is directed to pay maintenance at the rate of Rs.7,000/- (Rupees seven thousand) p.m. to appellant No.1 and Rs.5,000/- (Rupees five thousand) p.m. to the appellant No.2 i.e. aggregate Rs.12,000/- (Rupees twelve thousand) p.m. from the date of the order of the Family Court, Auragnabad. The arrears as per the present order shall be paid within a period of six (6) months and maintenance per month as awarded by this Court shall be paid regularly each month. Needless to state as has been ordered by the Family Court the amount of maintenance awarded U/s 125 of the Cr.P.C. is merged in the maintenance herein awarded.

Sd/-
(K.K.SONAWANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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