

**INTHEHIGHCOURTOFJUDICATUREATBOMBAY
NAGPURBENCH , NAGPUR .**

FAMILYCOURTAPPEALNO . 43OF2019

Pradeeps/oBabanraoWankhede ,
Agedabout46years,
Occupation:Service,
R/o.ZilaParishadPrimarySchool
Ranwadi, PostMaywadi,
Tah.Narkhed, Dist.Nagpur ...**APPELLANT (Org. Respondent)**

.VERSUS .

MasterSakashits/oPradeep
Wankhede , Agedabout18years,
Occupation:Student,
throughNaturalGuardian
MotherRanjnaD/oLaxmanrao
Wahane, R/oPlotNo.15, Ishwar
KolteLayout, GodhaniRailway,
Nagpur, Tah.&Dist.Nagpur ...**RESPONDENT (Org. Petitioner)**

WITH

FAMILYCOURTAPPEALNO . 16OF2020

MasterSakshists/oPradeep
Wankhede , Aged-18years,
OccupationStudent, R/oPlot
No.15, IshwarKolteLayout,
GodhaniRailway, Nagpur ...**APPELLANT (Ori. Petitioner)**

.VERSUS .

Mr. PradeepS/oBabanrao
Wankhede , Aged-46years, Occu.
Service, R/oZilaParishad
PrimarySchool, Ranwadi, Post-
Mayawadi, Tah.Narkhed, Dist
Nagpur. ...**RESPONDENT (Ori-Respondent)**

Shri R.M. Patwardhan, Advocate for the appellant in FCA No. 43/2019 and for respondent in FCA No. 16/2020.

Ms Amruta Gupta, Advocate for respondent in FCA No. 43/2019 and for appellant in FCA No. 16/2020.

CORAM: A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : -OCTOBER 13, 2021

O R A L J U D G M E N T (Per: G. A. Sanap, J.)

Both these appeals arise out of judgment and decree, dated 09.01.2019, passed in Petition No. C-55 of 2015, under Section 20 of the Hindu Adoptions and Maintenance Act, 1956. The learned Judge of the Family Court, Nagpur allowed the petition and awarded the maintenance @ Rs. 5000/- per month from the date of the petition i.e. 27.10.2015. The petitioner, who is the son, has assailed the impugned judgment and decree on the ground that the amount of monthly maintenance is meager and needs to be enhanced. The respondent-father assailed the judgment and decree on the ground that the amount of maintenance awarded by the impugned judgment and decree is excessive and exorbitant.

2] Both the appeals are being disposed of by the common Judgment. Parties in this judgment would be referred by their nomenclature in the petition filed before the Family Court, Nagpur.

3] The facts giving rise to these appeals are as follows:

The petitioner is the son of the respondent. The parents of the petitioner got married on 25.06.2000. The petitioner was born in 2001. It is stated that after marriage the dispute arose between the parents of the petitioner. The respondent used to demand the salary of his mother. The respondent ill-treated and tortured his mother. The relative tried to settle the dispute however, due to the conduct of the respondent it was not possible. The mother of the petitioner lodged the complaint at Katol Police Station and on the basis of the crime registered, under Section 498-A of the Indian Penal Code. The respondent was prosecuted. The mother of the petitioner started residing with her parents. When the petitioner was born, his parents were living separately. It is stated that the mother of the petitioner had given notice to the respondent for divorce by mutual consent & filed the petition for divorce. The petition was decreed on 21.07.2009 and by the decree of divorce the marriage between his parents was dissolved.

4] It is the case of the petitioner that the respondent did not both to maintain him. His mother borne his education as well as day to day expenses. His mother faced great difficulties while maintaining him with her meager salary. The respondent did not both to enquire about the well-being of the petitioner as well as his mother. The respondent is doing service as 'Assisant

Teacher' and his monthly salary is around Rs.45,000/-. The petitioner, therefore, prayed for maintenance @ of Rs.15,000/- per month and the education expenses.

5] The respondent filed thereply/written satement and opposed the petition. The respondent has not denied his liability to maintain the petitioner however, it is his case that the mother of the petitioner did not allow the respondent to meet his son and when he expressed the desire to see and meet his son/ petitioner. The mother has denied the respondent, the pleasure of the company of the petitioner. Similarly, the mother of the petitioner filed false complaint against him. According to the respondent, the mother of the petitioner is doing service as an 'Assisat Teacher' and getting monthly salary of Rs.48,000/-. The respondent has to maintain his divorcee sister and the daughter of his sister. He has also to maintain his old aged mother. On these grounds, he prayed for dismissal of the petition.

6] The learned Judge of the Family Court on the basis of the material placed on record granted the decree and awarded the maintenance @ of Rs.5000/- per month. Both parties being aggrieved, for the reasons sated aforesaid, by filing separate appeals have come before this Court. We have heard the learned Advocate for the petitioner and the learned Advocate for the respondent. We have gone through the record and proceedings.

7] Ms Amruta Gupta, the learned Advocate for the petitioner submitted that the petitioner is the meritorious student. The learned Advocate pointed out that in 10th standard he secured 93% mark. The learned Advocate further pointed out that he cleared the entrance examination for joining the IT and got admission in IT Dhanbad (Mechanical Stream). The learned Advocate submitted that the mother of the petitioner spends till date on the education as well as on day to day maintenance of the petitioner. The learned Advocate submitted that being father, the respondent is equally responsible to share the maintenance and expenses of the petitioner. The learned Advocate submitted that considering the monthly salary of the respondent, the amount of the maintenance quantified by the learned Judge is negligible and insufficient to meet the bare minimum requirements of the petitioner.

8] The learned Advocate for the respondent has not made any submission challenging the judgment and decree on merits. The learned Advocate restricted his submission to the quantum of the maintenance awarded by the learned Judge of the Family Court. The learned Advocate submitted that the respondent has been equally sharing the education expenses of the petitioner with his mother. The learned Advocate submitted that there is ample evidence on record to establish that the divorcee sister and sister's daughter and old aged mother of the respondent are dependent on him. The learned Advocate submitted that the learned Judge

of the Family Court has not taken all these aspects into consideration. The learned Advocate further submitted that the quantum of monthly maintenance is excessive and exorbitant and therefore, it needs to be reduced.

9] It is undisputed that the petitioner during the pendency of the litigation has attained majority. He is studying in IT Dhanbad. The learned Advocate for the petitioner submitted across the bar that he is in the third year of IT. The respondent in his cross examination has admitted that he is ready to pay the education expenses of the petitioner. It is seen that the grievance of the respondent is that he was not allowed access to the petitioner and therefore, there was a dispute. In our opinion, this contention of the respondent does not survive inasmuch as the petitioner has attained majority. The petitioner being a major can freely meet his father - respondent. Similarly, the respondent can meet the petitioner. Therefore, this fact would not stand in the way of the petitioner from getting the maintenance from the respondent.

10] It has come on record that before the birth of the petitioner his parents separated from each other. The petitioner has been residing with his mother. The respondent and the mother of the petitioner are serving as 'Teachers'. It is therefore apparent that both are equally responsible to share the maintenance as well as the education expenses of the petitioner.

The mother of the petitioner has deposed that the respondent has not bothered to take care of either the maintenance or education expenses of the petitioner. It has come on record that the marriage between the parents of the petitioner was dissolved by decree of divorce on 21.07.2009. It is therefore seen that the petitioner who happens to be the meritorious child has been made to face this unfortunate situation. Considering his plight & needs he was constrained to knock the doors of the Court.

11] The learned Judge of the Family Court considered the facts and evidence while quantifying the maintenance. The learned Judge as can be seen from the judgment took into consideration the day to day living cost in the ordinary circumstances by a person. The learned Judge has also taken into consideration the sky rocketing education expenses. It is the grievance of the petitioner that this amount of maintenance is not sufficient to satisfy his bare minimum requirements. Ongoing through the evidence and considering the fact that the petitioner is meritorious student and taking education in IT Dhanbad, the quantum of maintenance could not be said to be just and reasonable. In our opinion, considering the facts and evidence, the grievance made by the respondent that the quantum of maintenance is excessive and exorbitant cannot be accepted.

12] The respondent being father of the petitioner is liable to make provision for the maintenance of the petitioner. The

respondent is doing service. His monthly salary is around Rs.45,000/-. Even if it is assumed for the sake of argument that there are some other persons dependent on him, the petitioner must be the first priority of the respondent in the matter of maintenance. If the respondent fails to share the maintenance & expenses then the mother would be required to bear the unnecessary burden. Therefore, we do not find any substance in the appeal filed by the respondent. In view of the aforesaid facts we are of the view that the amount of maintenance granted @ of Rs.5000/- per month could not be said to be just and reasonable. In our opinion, considering the fact that the parents of the petitioner are doing service and having their own maintenance and responsibilities, the reasonable amount of maintenance is required to be quantified. In our view, in the facts and circumstances, the monthly maintenance of Rs.7500/- would be just and reasonable. Accordingly, we quantify Rs.7500/- as monthly maintenance payable by the respondent to the petitioner from the date of the petition i.e. 27.10.2015. As far as the education expenses are concerned, the respondent and the mother of the petitioner shall share it equally. The respondent and the mother of the petitioner on their own must devise the mechanism to obtain the statement of the education expenses and to share the same. In view of the above, we conclude that the Family Court Appeal filed by the respondent bearing No.43 of 2019 deserves to be dismissed. The Family Court Appeal filed by the petitioner bearing No.16 of 2020 is required to be allowed.

and the order of maintenance is required to be modified as above.
Hence, the following order-

ORDER

- i. The Family Court Appeal No. 43 of 2019 stands dismissed.
- i. The Family Court Appeal No. 16 of 2020 is allowed.
- i. The order of the learned Judge of the Family Court awarding the maintenance @ Rs. 5000/- per month is modified. The respondents shall pay Rs. 7500/- per month to the petitioner towards the maintenance from 27.10.2015. Both the parents of the petitioner shall equally bear the education expenses of the petitioner - Sakashit S/o Pradeep Wankhede till he completes his education.
- iv. The arrears if any be cleared within a period of three months from today by the respondent.

Both family court appeals stand disposed of in above terms.

JUDGE

JUDGE

Namrata