

Shri B. Vs. Smt. a

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Court : Mumbai

Decided On : Jan-16-1992

Reported in : (1992)94BOMLR160

Judge : S.W. Puranik and ;N.D. Vyas, JJ.

Appeal No. : L.P. Appeal No. 11 of 1991 in F.A. No. 834 of 1987

Appellant : Shri B.

Respondent : Smt. a

Disposition : Appeal dismissed

Judgement :

N.D. Vyas, J.

1. This is a letters patent appeal preferred by the husband against the judgment and order of Ashok Agarwal J. of this Court. By the said judgment the learned Single Judge allowed the appeal preferred by the respondent herein, namely, the wife, reversed the decision of the trial Court and enhanced the maintenance qua the children. The appellant husband has preferred this appeal being aggrieved by the said decision. Cross-objections are filed by the respondent claiming more maintenance.

2. The appellant had filed the petition for divorce in the Bombay City Civil Court praying for divorce on the grounds of cruelty and desertion and for custody of the minor children.

3. The brief facts leading to the present litigation are as follows:

4. The parties, both Hindus, were married on March 18, 1967 at Bombay according to Hindu Vedic Rites. At the time of the marriage the appellant husband was employed as a lecturer with Polytechnic College at Amravati and the respondent wife was employed as a lecturer in Ruia College, Bombay. Sometime after the marriage the wife tendered her resignation and accompanied her husband to Wardha where her in-laws were residing. After staying there for few days they proceeded to Amravati and stayed there till the end of April 1967. Thereafter the wife came back to Bombay for the purpose of assessing the examination papers. She also undertook German language course. The resignation which she had tendered soon after her marriage was withdrawn by her in May 1967 and she rejoined the Ruia College at Bombay in June 1967. In June 1967 the husband was called for an interview for German Scholarship for which he was selected and between July and September 1967 the husband attended the German language course at Pune. He went to Germany on October 10, 1967 and returned only in December 1968. On his return the husband rejoined the college at Amravati in December 1968. At the husband's instance the wife resigned from her job and joined her husband at Amravati in March 1969. In December 1969, both the husband and wife came to Bombay and the wife got re-employed in Ruia College. In August/September 1970 the husband was again transferred to Nagpur and from there in March 1971 to Amravati. However, in July 1971 the husband joined V J.T.I, at Bombay for post-graduation and was posted in Bombay after he completed his post-graduation examination. During this period the couple resided in Shardashram for some time. Thereafter the husband resided in the V J.T.I, hostel during which period the wife resided with her parents. On January 11, 1972, a son Abhijeet was born to the couple. During October/November 1974 the couple resided at Thane and thereafter at Bandra. The wife had, in 1972, booked a flat at Andheri and after the said flat was ready for possession, the couple moved into the same in March 1974 and made it their matrimonial home. On September 1,

1975, a daughter Ajita was born. On July 1, 1976 the husband came to be transferred to Nagpur and the wife continued to live at Andheri with the children and got herself admitted for M.A. in Sociology. After the transfer of the husband to Nagpur in July 1976, the arrangement arrived at between the parties was that the husband would visit the family almost every month or so for few days and during vacations the children and the wife would go to join him at Wardha. The husband was living at Wardha with his parents and commuted to Nagpur for his job. This arrangement continued up to early 1979 when the husband wrote two letters (Exhibits 'B' and 'C' colly.) to the wife and on receipt thereof the relations between the parties started disintegrating which ultimately culminated into the present matrimonial petition being filed in Bombay. After the receipt of the said two letters, the husband stopped his visits to Bombay and also discontinued to send Rs. 300/- per month which he was hitherto sending. There were few letters exchanged. This continued for 11 months. After which the husband took back to Wardha some furniture which belonged to him and filed a matrimonial petition for divorce at Wardha which he withdrew and filed the petition for divorce in Bombay. The married life of the couple could be, thus, divided into three distinct periods, namely, from the date of their marriage to the date on which they made the Andheri flat their matrimonial home in 1975; from 1975 till the husband wrote the said letters in September 1978 which were posted and received by the wife in April 1979 and the last period being the period thereafter till the matrimonial petition in Bombay was filed.

5. It is submitted by Shri Gunjalkar, the learned Counsel for the appellant husband, that the judgment of the learned Single Judge is erroneous inasmuch as the appellant had made out a case for divorce as found by the trial Court and that the increase in maintenance by the learned Single Judge was also erroneous. The learned Counsel, thus, argued that the wife was guilty of cruelty, that she was also guilty of desertion, that in any view of the matter since the marriage had irretrievably broken down this Court should grant divorce to the parties and lastly that the maintenance awarded by the learned Single Judge was erroneous. Shri Angal, the learned Counsel for the respondent, submitted that the wife had neither treated the husband with cruelty nor deserted the husband, that a marriage cannot be dissolved on the ground of the same having been irretrievably broken and lastly

that the maintenance granted should have been more and that too even after attaining majority the children should have been provided for marriage and further education expenses. Both the counsel have taken us through the pleadings and the evidence on record.

6. Before we take up the first submission of the learned Counsel on behalf of the appellant, namely, that the wife was guilty of cruelty, it would be advantageous to see the provision of the Hindu Marriage Act (for short, 'the Act') which is applicable to the parties in order to appreciate the material placed before this Court to come to a conclusion as contended by the appellant. Sub-section (1)(ia) of Section 13 provides that marriage could be dissolved on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. The Act does not define the word 'cruelty'. However, the Full Bench of this Court had the occasion to consider this provision of law in *Dr. Kesharao Krishnaji Londhe v. Mrs. Risha Londhe* : AIR1984 Bom413 and has laid down that 'cruelty' contemplated under this provision is 'a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent'. In the said decision, the Full Bench has approved the following observation of Punjab and Haryana High Court in *Ashvini Kumar Sehgal v. Smt. Swatantar Setigar* (1979) MLR 26 (P & H)

Cruelty in such cases has to be of the type which should satisfy the conscience of the Court to believe that the relations between the parties had deteriorated to such an extent due to the conduct of one of the spouses that it has become impossible for them to live together without mental agony, torture or distress.

7. In the light of above position in law, we shall now examine the material on record. First we will examine the petition filed by the appellant herein, but while doing so we will have to bear in mind the provisions of Section 20 of the Act which require every petitioner to state distinctly the facts on which the claim to relief is founded. In the petition the appellant, referring to the period during which both the parties lived together at Bombay prior to July 1976, has, in paragraph 6, averred as follows:

8. That although the appellant insisted that he and the respondent should visit Wardha frequently alongwith the children, the respondent refused to accompany him to Wardha and during the period from 1967 to 1973 accompanied the appellant only on 3 or 4 occasions and that after 1973 respondent failed and neglected to ever visit the appellant's parents at Wardha. That on those few occasions also when the respondent was at Wardha she was tight lipped towards the appellant's parents and that the respondent used to have reservations about the children accompanying the appellant.

9. In paragraph 7 of the petition the appellant, referring to the period after his having been transferred to Nagpur in July 1976, further avers that when he was 'transferred to Nagpur in July 1976 the respondent got herself admitted for the post-graduate course in Sociology at Bombay without enquiring or informing the appellant about the same, that during summer and Diwali holidays thereafter the respondent refused to join the appellant at Wardha; that in May 1979 the respondent not only refused to accompany the appellant but instead decided to go on a holiday to Ahmedabad along with her younger sister and her husband and that behaviour of the respondent disturbed the appellant and that on appellant finding the respondent having undue interest in her younger sister's husband, the appellant wrote two or three letters to the respondent stating the same and that without the consent and knowledge of the appellant the respondent with the help of her relatives took away the children from the appellant's father's house at Wardha.

10. In paragraph 8 of the petition, referring to the period after the receipt of the said two letters (Exhibits 'B' and 'C' colly.), the appellant avers that whenever he visited Bombay he was clearly told that the said marriage was not likely to last; that under no circumstances the appellant was allowed to take the children either to Wardha or Nagpur; that the respondent hardly talked to the appellant during these visits and that the respondent not only did not care for appellant's parents but was rude to them.

11. Lastly, in paragraph 9 of the petition, general averments are made to the effect that the appellant was fed up with the married life.

12. In her written statement the respondent has vehemently denied the allegations and has alleged cruelty and desertion on appellant's part. Now, from the above averments made in the petition, we have no hesitation to come to the conclusion that the averments made are too general and vague and devoid of any particulars and that the appellant has not complied with the mandatory provisions of Section 20 of the Act referred to above by us.

13. However, at the time of trial oral evidence was also led and several documents produced as exhibits. In view of the evidence led, we are not taking a strict view to go only by the averments made in the petition but will also examine the evidence led at the trial in this behalf. Only the parties have tendered oral testimony. The appellant has not examined his parents towards whom according to the appellant the respondent was rude. Regarding documentary evidences, mostly letters interparty are produced. The appellant has produced only one letter written to him by respondent and stated in his evidence that he had not preserved other letters of the respondent. Agreed English translations of the documents exhibited have been supplied to us. In his oral evidence the appellant has again made vague allegations against the respondent and has repeated in paragraph 13 that during their visits between 1971 to 1975 to the appellant's parents the respondent was not willing to accompany the appellant. In paragraph 14 of his evidence the appellant has stated that he asked the respondent to resign from the job after June 1976 and to go with him to Nagpur where he was posted but the respondent refused and asked the appellant to get himself transferred to Bombay. In paragraph 15, in respect of the period from 1976 to 1979 April, the appellant has stated that he used to come to Bombay every month and on such visits there used to be quarrels between the parties on two points, namely, for money and that the appellant should get himself transferred to Bombay, and that during such quarrels the respondent used to use offensive language and used to stop talking with the appellant and at nights used to sleep in a separate room and that this conduct of the respondent was causing great mental tension to the appellant and he had to pass sleepless nights. Lastly, in the same paragraph, the appellant says that the effect of the treatment meted out by the respondent to him on his visits to Bombay used to cause mental tension and the appellant felt that there was no use in this sort of married life. Further, in his evidence in paragraph 17, although the

appellant had nowhere relied upon the said two letters written in September 1978 and posted in April 1979, the appellant has referred to the same and stated that the said letters specifically mention that the respondent's conduct was causing great mental tension and spoiled appellant's whole married life and that in the said letters the appellant had referral to the respondent's behaviour and various incidents. In his evidence in paragraph 19, the appellant stated that in April 1979 when he came to Bombay to take his children to Wardha, he found that the respondent was devising ways and means of being in close touch with her brother-in-law and in this background the appellant became uneasy when the appellant learnt that the respondent was accompanying her brother-in-law to Ahmedabad and that impelled him to write the said letters from Wardha. Further in his evidence in paragraph 20, he has deposed that respondent's behaviour towards her brother's friend Joshi was one of attachment. Over and above the averments in the petition referred to above and the oral evidence analysed hereinabove, the appellant has said nothing to make out a case of cruelty in his favour and the appellant cannot succeed. However, the appellant has, in order to buttress his case, sought support from the said two letters sent by him from Wardha and which are Exhibits 'B' and 'C' (colly.) in the record. On his own admission, the appellant had started writing these letters in September 1978 but posted them only in April 1979. Referring to the said two letters the appellant himself has, in paragraph 8 of his petition, slated as follows:

The petitioner states that the respondent informed the petitioner that since the said two letters which he had written to the respondent in a fit of rage the petitioner had referred to the undue interest that the respondent took in her younger sister's husband, the petitioner would have to apologize for the same to both the respondent and the younger sister's husband..

14. It is obvious from this averment that the appellant felt apologetic for having sent these two letters to the respondent. However, in his cross-examination, when asked about these letters, he tried to justify the allegations made against the respondent. In the said two letters very serious allegations have been made against the character of the respondent. After accusing respondent of promiscuity and of loose character the appellant has gone to the extent of alleging illicit

relations between the respondent and her younger sister's husband. At the end of Exhibits 'B' and 'C' (colly) the appellant has stated -

I now do not wish to come there I have no desire to keep a defiled wife....

15. When again asked in the cross-examination as to this attack of his on the character of the respondent, the appellant deposed-

It is my impression formed of the respondent that she is not chaste and unfaithful to me. I would not like to say that she was having extra marital relations because I do not have proof with me. Right from the beginning of my married life I felt that the respondent was unfaithful to me. In spite of this I continued to cohabit with her. Exhibit 'B' (colly.) and Exhibit 'C' are letters posted by me in May 1979. I have stated in the petition that these letters were written in a fit of rage but I would now like to say that they were written in a state of uneasiness.

16. It is not necessary to deal in detail with the allegations made in the said two letters because, according to us, on his own admission the allegations against the character of the respondent in the said letters are made without any basis and only out of suspicion. Other allegations in the said two letters are also vague and general. These two letters and few other letters written thereafter by the appellant are full of taunts, sermons, naggings and sarcasms.

17. On the basis of the pleadings and the evidence oral as well as documentary, we have no hesitation in holding that the appellant has failed to prove that the respondent had treated him with cruelty.

18. In any view of the matter, the appellant, in his evidence in paragraph 44, has admitted -

Between my letter dated September 28, 1978 till May 1979 I visited Bombay almost every month. Even after the letter dated September 28, 1978 I had marital relations with the respondent but the occasions were very few.

19. The respondent has, in her evidence (paragraph 34), deposed -

After December 80 visit, the next visit of the petitioner was in February 1981. He stayed with me for 4 to 5 days and cohabited with me. Then his next visit was in March 81 when children's examinations were going on and stayed for two weeks with me at Andheri and cohabited with me.

20. In cross-examination of the respondent, in support of this part of her evidence, the respondent deposed (paragraph 82) -

It is not true that during petitioner's visit in August 80, December 80 and March 81 there was no cohabitation at all.

21. It is clear that the suggestions which were made to the respondent in the cross-examination related to the respondent's deposition in her examination-in-chief reproduced hereinabove in respect of August 1980, December 1980 and March 1981 visits only and that no such suggestion has been made in respect of February 1981 visit of the appellant. In these circumstances, the statement of the respondent in respect of appellant's visit in February 1981 and her statement in respect of the appellant having cohabited with her has not been controverted. However, we are not inclined to take a strict view of this evidence as far as this aspect is concerned. Suffice it to say that the appellant's own admission of having cohabited with the respondent after the letters of September 28, 1978 itself shows that the appellant had condoned the respondent's cruelty. In these circumstances, we agree with the finding of the learned Single Judge that the appellant has failed to prove the respondent guilty of cruelty.

22. Now coming to the second submission of Shri Gunjalkar, the learned Counsel for the appellant, namely, that the respondent had deserted the appellant, let us see what the appellant has to prove in order to succeed. It is settled law that a petitioner complaining of desertion has to prove factum of separation and intention on the part of the deserting spouse to permanently bring cohabitation to an end, i.e., animus desertendi. We shall first examine with what case the appellant has approached the Court. When asked, the learned Counsel for the appellant submitted that it was the respondent who had withdrawn herself from the appellant and that there was no cohabitation after August 1980 and it was immaterial where the matrimonial home was. As far as this ground is concerned, we do not find any

averment anywhere in the petition alleging that the respondent had deserted the appellant and under what circumstances. On the contrary, there is sufficient material not only in the petition but in the evidence itself to show that it was the appellant himself who had deserted the respondent and his children and was now complaining of desertion on the part of his wife as he finds it more convenient to do so. In his own letter Exhibit 'B' the appellant has stated as follows: 'There are many advantages of staying in Bombay. Children could be brought up in good company and they can be given good education; your labour should also be rewarded; you should be doing a job to your liking and there should be benefit from the financial angle; these were my desires while having an alliance with Bombay. It will be possible to learn other trade as well in Bombay; Children will also have a scope in all respects and you too will not feel cooped up at home. This was my intention behind staying in Bombay. In a small village there is neither scope nor good company for children. But you never gave me the mental satisfaction and joy in coming to Bombay.'

23. This shows that the appellant had intended to settle down in Bombay. In his petition in paragraph 6 the appellant himself has described the flat at Andheri being the matrimonial home. Further in paragraph 8 of his petition, he has admitted that the petitioner's parents are very old and it is his duty to look after them in old age and that the appellant is not in a position to bring them to Bombay even if he desires and, thus, the appellant is torn between two loyalties. As a natural consequence of his attachment towards his parents, as admitted by him, although the parties made the flat at Andheri their matrimonial home in 1975, the appellant got himself transferred to Nagpur in July 1976. On behalf of the appellant it was contended that he had no hand in his transfer, but in view of his own admissions we have come to the conclusion it was of his own doing. In his advocate's notice dated August 4, 1981 (part of Exhibit 6 (colly.)), it has been stated on behalf of the appellant that the respondent flatly refused to go to Wardha when a pressing need arose to shift which was at about the end of 1975 and that the appellant had to go to Nagpur on transfer in 1976 July. According to this notice not joining the appellant at Wardha when asked to do so by appellant amounted to desertion according to the appellant. The conduct of the appellant, as could be seen from the evidence, is that he was torn between his parents on the one side

and his wife and children on the other; that he preferred to stay at Wardha and commute to Nagpur every day for his job and commute to Bombay once a month or so to meet his family; to contribute some amount towards maintenance to the respondent to run the house at Bombay and to raise two small children and also expected the respondent to continue her job in Bombay.

24. The situation, however, radically changed after the two letters of the appellant (Exhibits 'B' and 'C') which were received by the respondent in, May 1979. It is the admitted position that after the respondent brought back the children from Wardha during May 1979 there was no personal contact between the appellant on the one side and the respondent and the children on the other side for almost 14 months. Further, after May 1979 the appellant stopped sending Rs. 300/- per month to the respondent and his children. There are few letters, however, which are exchanged between the parties, most of them letters by the appellant to the respondent and the children. In his letter dated June 22, 1979 (Exhibit 'E'), the appellant has recorded the invitation which the respondent had given not only to the appellant but to appellant's parents also to come down to Bombay. In his letter dated September 7, 1980 (Exhibit 7), the appellant has acknowledged the letter which he received from the respondent and stated -

If I come it shall be for ever. This is your determination not to resort to coming and going. Therefore, I have to resort to coming and going because children are possessed by you.

25. This itself shows that the respondent had, in fact, written to the appellant about her readiness to join him at Wardha and that the appellant himself was not willing for the same as he rather preferred the respondent and the children to remain in Bombay where he could meet them off and on on his visits. On his visit, in April 1981, the appellant admittedly collected several pieces of furniture including dining table which was used by the respondent and the children not only for the purpose of taking their meals but also for the purpose of their studies. He even took away the gals connection. This he has recorded in his letter dated April 27, 1981 (Exhibit 3) and in the said letter he has referred to his demand for return of ornaments by the respondent. Referring to the removal of articles, especially gas, cooker, table

and chairs, although he had expressed great pain, he, however, stated in the latter that if he had not brought back his articles at that time he would never have got them later on. Then came the letter from the appellant dated June 20, 1981 (Exhibit 'O'). The respondent by her letter in reply dated July 3, 1981, after putting on record the type of life she was compelled to lead with the appellant, stated that it was the appellant who got himself transferred to Nagpur at the instance of his mother and decided to visit Bombay off and on. In the said letter, again, the respondent expressed her distress at the charges having been levelled against her character in the said two letters (Exhibit 'B' and 'C') and further stated that she had neither forgotten the false charges nor she could forgive the appellant but in the interest of their married life and the future of their children she requested the appellant to take back the charges and to return to Bombay with sincere mind and that the respondent was ready to lead life with him. The appellant, in reply to the said letter of the respondent dated July 3, 1981, did not deny the statement made by the respondent that it was the appellant who had got himself transferred to Nagpur, but had nothing to say about the respondent's willingness to lead normal married life with him. The appellant had earlier filed a petition at Wardha seeking divorce on the ground of cruelty and desertion and had in respect of desertion stated that when the respondent refused to join the appellant at Wardha, that fact amounted to desertion on the part of the respondent. The appellant has himself, in paragraph 8 of the present petition, admitted -

The petitioner states that since about 1979 the petitioner stopped residing with the respondent at the said matrimonial home and used to visit the same only during the hours when the children were likely to be at home.

26. Taking all these facts into consideration, we have no hesitation to come to the conclusion that it was not the respondent but the appellant who had deserted the respondent and the children and had chosen to make Wardha his home. Thus, we agree with the finding of the learned Single Judge that the appellant has failed to prove that the respondent had deserted him.

27. Coming to the third submission of the learned Counsel for the appellant, namely, that in any view of the matter since the parties have not been staying

together and the relations are strained between the parties it is obvious that the marriage has irretrievably broken down and the Court should, in these circumstances, grant divorce as prayed for. In support of this contention, the learned Counsel for the appellant referred to a judgment of the Supreme Court in *Smt. Saroj Rani v. Sudershan Kumar Chadha* : [1985]1SCR303 . We cannot accept this contention for a simple reason that the grounds which are enumerated in the said Act are the only grounds available for seeking divorce and the said decision of the Supreme Court does not help the appellant. There is no scope for introducing a new ground when the legislature has not thought fit to do that. To accede to the learned Counsel's submission would be travelling beyond the statute which we do not wish to do. We find support in our view in a division bench judgment of this Court in *Smita Dilip Rane v. Dilip Dattaram Rane* [1990] M.L.J. 69 : (1989) 92 Bom. L.R. 62 In the said judgment the Division Bench of this Court has held that when the Hindu Marriage Act specifically sets forth the grounds on which the marriage may be dissolved, additional grounds cannot be included by the judicial construction of some other section unless that section plainly intends so. The Supreme Court decision in *Smt. Saroj Rane's case* (ibid) cited by Shri Gunjalkar is specifically considered by the said Division Bench and has held that the said Supreme Court judgment nowhere lays down what was contended before the said Division Bench and now before us. In view of this position in law, we cannot accede to the submission of the learned Counsel and we reject the same.

28. Lastly, we come to the fourth submission of Shri Gunjalkar, namely, that the learned Single Judge had erred in increasing the maintenance granted by the trial Court. Shri Angal, the learned Counsel for the respondent, on the other hand, submitted that the learned Single Judge had erred in not taking into consideration while granting maintenance the expenses which would be incurred for the marriage of the daughter and further education of the children. He contended that Section 26 of the Act speaks of providing for, inter alia, 'maintenance', and maintenance not having been defined in the Act, one can safely refer to the definition of 'maintenance' given in Section 3(b) of the Hindu Adoption and Maintenance Act, 1956. The said definition of maintenance in the Hindu Adoption and Maintenance Act, 1956 provides-

3. Definitions - In this Act, unless..

(b) Maintenance' includes -

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

29. In support of his contention, Shri Angal cited a Division Bench decision of our Court in *Shanta Wadhwa v. Purshottam Mohandas Wadhwa* [1977] M.L.J. 661. In the said case the wife had, in a matrimonial proceeding, asked for a further relief of injunction against the husband in respect of the matrimonial home which was of her ownership. The Division Bench had the occasion to consider Sections 25 and 27 of the Act and had relied on the definition of 'maintenance' in the Hindu Adoption and Maintenance Act, 1956. We do not think that this judgment at all helps the respondent in the present case. The said decision is distinguishable for a simple reason that there was no question of providing for minor children and, therefore, the provisions of Section 26 of the Act were not considered as they were not relevant at all in the facts and circumstances of the said case. Shri Angal further cited a Division Bench decision of this Court in *Krishnakant Raoji Dalvi v. Sadhana Krishnakant Dalvi* (1983) Bom L.R. 113 of 1983 (Unrep.) We are unable to appreciate as to how this decision is helpful to the respondent. In that matter, the letters patent appeals arose out of a decision in the wife's and the children's suit for separate residence and maintenance under the provisions of the Hindu Adoption and Maintenance Act and, therefore, there was no occasion to consider a submission similar to the one canvassed before us. Shri Angal, lastly, cited a decision in *Gitanjali Gajanan Tendulkar v. Gajanan Dinkar Tendulkar* [1989] M.L.J. 371 in which the learned Single Judge of this Court had, without reference to Section 26 of the Act, taken a very broad view and had granted interim maintenance to a son who was already a major. The said decision does not give any reasons as to why, despite the clear language of Section 26 of the Act, maintenance was permitted to be provided for a major son. In our view, the view taken by the learned Single Judge in the said decision is not a correct view and we

do not approve of the said decision. On a plain reading of Section 26 of the Act, it is clear that it could be availed of only in respect of minor children and what could be provided under that provision is for the custody, maintenance and education of minor children only. Shri Gunjalkar, on the other hand, in support of his contention that Section 26 is restricted only to minor children and the scope thereof cannot be expanded to cover children who have attained majority, has cited a decision of a single Judge of this Court in Kartarchand Delliram Jain v. Smt. Taravali Kartarchand Jain : AIR1982 Bom15 The said decision is directly on the point. The learned Single Judge rejected the contention that under Section 26 the Court had power to grant maintenance to adult daughters. The learned Single Judge, in the said decision, has specifically answered this question by saying that under the provisions of Section 25 adult daughters were not entitled as they could have recourse for seeking maintenance from their father under Section 20 of the Hindu Adoption and Maintenance Act, 1956. We are of the opinion that the view expressed by the learned Single Judge in the said decision is a correct view. In the result, we reject Shri Angal's contention and hold that what could be provided under Section 26 of the Act could be only in respect of minor children, and that definition of 'maintenance' given in the Hindu Adoption and Maintenance Act, 1956, cannot be used for expanding the applicability of the provisions of Section 26 of the said Act. It was alternately submitted by Shri Angal that within the framework of Section 26 better provision should be made for the minor children. During the hearing of the present appeal the appellant has filed an affidavit showing his net income and the take home packet at Rs. 5,200/- per month. It was stated across the bar by Shri Gunjalkar that the gross salary of the appellant was Rs. 3,375/-. Taking into consideration his income and the fact that he has to meet expenses of his old parents, we feel that the maintenance granted by the learned Single Judge should be increased to Rs. 500/- per month per child and that too with effect from the date of the petition filed in the trial Court till they attain majority.

30. In view of what we have held above, we confirm the judgment and order of the learned Single Judge and vary only his order in respect of maintenance as mentioned hereinabove. In the result, the appeal is dismissed. The cross-objections are partly allowed. There will be no order as to costs.

