

AFR

Court No. - 44

Case :- FIRST APPEAL No. - 400 of 2021

Appellant :- Roshni Tiwari

Respondent :- Balmukund Tiwari

Counsel for Appellant :- Akanksha Sharma

Counsel for Respondent :- Rajendra Prasad Tiwari, , Vinay Kumar Tiwari

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Krishan Pahal,J.

1. The present appeal is directed against the order of rejection of application of the daughter filed under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "the Act, 1956") seeking maintenance from her father. In the said application, she had claimed maintenance on two grounds; firstly that she had been doing nursing course and her mother had incurred huge expenditures in educating her. She was paying Rs. 3500/- per month towards fee and there was no other source of income. She, therefore, demanded the fee being paid by her for continuing the said course. Another ground to seek maintenance was that the applicant-daughter was of marriageable age and she needed money towards marriage expenses which was the responsibility of her father.

2. The said application filed on 7.5.2015 had been rejected vide order dated 6.10.2017 on the ground that the fee receipts which were submitted by the applicant for pursuing the nursing course were of the year 2012. By the time the case was decided, she had completed the nursing course. Further after completion of the said course, the appellant got a job from which she was earning Rs. 4500/- per month. It was also noted by the family court that an amount of Rs. 1000/- per month was being paid to the appellant till she attained the age of majority on 25.2.2011. As regards the claim of the appellant for marriage expenses, there is no whisper in the entire judgment.

3. The respondent namely Sri Balmukund Tiwari, father of the

appellant is personally present in the Court. The personal presence of the appellant has been dispensed with by the order dated 20.10.2021.

4. Ms. Akanksha Sharma learned Advocate for the appellant, at the outset, states that the appellant though is pursuing a higher study course namely "Post Basic Nursing Training course" in a college at Bhopal wherein she had taken admission in the Academic session 2017-18 but she has decided not to pursue her prayer for grant of expenditures/fee incurred for the said course.

The appellant, however, presses her claim for the marriage expenses.

The contention is that the appellant is aged about 27-28 years and being of marriageable age, her mother is looking to the suitable proposals but none of them could be materialized for want of financial resources. The amount of Rs. 10 Lacs has been demanded by the appellant towards the expenditures to be incurred in her marriage.

5. On a query made by the Court, Sri Rajendra Prasad Tiwari learned Advocate for the respondent-father states that an amount of Rs. 1000/- per month was being given towards maintenance to the appellant till she had attained majority on 25.2.2011. It is admitted that the respondent-father had not paid a single penny towards education of his daughter who had completed Nursing Course and is pursuing a "Post Basic Nursing Training course" in a college at Bhopal, from the finances initially arranged by her mother and now by herself.

The contention of the learned counsel for the respondent-father is that the appellant is self-sufficient as she has started earning after completion of the Staff Nursing Course. However, it is an admitted fact of the matter that the respondent is in the Government Department and he is working as Tube-Well Operator in the Irrigation Department. As per own admission of the respondent-father, he is receiving salary of Rs. 42,506/- per month, after deduction of the P.F. and other amount towards

compulsory deductions. Whereas the appellant has no other source of income than her own earning, which according to the respondent itself is barely Rs. 4500/- per month. Out of the said earning the appellant is also incurring expenditures for payment of fee for pursuing higher study Nursing course and also bearing her daily expenditures.

As regards the decision of the family court, there is no deliberation on the issue of demand of the appellant for marriage expenses.

6. The claimant daughter is living with her mother for the last several years who has borne all her living expenses including education. The mother has managed to provide her daughter a good education. There was virtually no contribution of the father in the upbringing of his daughter. Meagre amount of Rs. 1000/- was paid under the order of the Court that too had been stopped as soon as she had attained majority, though the father was under obligation to pay the said amount to the claimant being his unmarried daughter. The respondent though is a Government employee did not volunteer to raise the maintenance amount to meet the requirement of his own child. The daughter had been left to live on her own. Apart from the claimant daughter, there are other male children of the respondent. The respondent though in his objection had alleged that the claimant is earning from the employment but he did not state that it was sufficient for her daughter. The maintenance does not mean the expenses sufficient for bare living or surviving but its object is to provide such means of sustenance with dignity which is befitting to the position and status of the parties. The living expenses is not the bare means of survival like food and clothings only. For a dignified living and to grow to become a responsible citizen, a child has to receive proper education. To be able to earn his livelihood, a child has to attain higher/vocational education.

7. On the maintainability of the application of the daughter to seek marriage expenses though there is no objection but we deem it fit and proper to consider the relevant provisions of the Act, 1956, quoted

hereunder:-

"Section 3(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 an incident to her marriage;

Section 20. Maintenance of children and aged parents:- (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation: In this section "parent" includes a childless step-mother.

Section 21. Dependants defined:- For the purposes of this Chapter "dependants" means the following relatives of the deceased:

(i) his or her father;

(ii) his or her mother;

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-

- (a) from the estate of her husband, or*
- (b) from her son or daughter if any, or his or her estate; or*
- (c) from her father-in-law or his father or the estate of either of them;*
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;*
- (viii) his or her minor illegitimate son, so long as he remains a minor;*
- (ix) his or her illegitimate daughter, so long as she remains unmarried.*

Section 23. Amount of maintenance:- *(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.*

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;*
- (b) the reasonable wants of the claimant;*
- (c) if the claimant is living separately, whether the claimant is justified in doing so;*
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;*
- (e) the number of persons entitled to maintenance under this Act.*

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;*
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;*
- (c) the degree of relationship between the two;*
- (d) the reasonable wants of the dependant;*
- (e) the past relations between the dependant and the deceased;*
- (f) the value of the property of the dependant and any income*

derived from such property; or from his or her earnings or from any other source;

(g) the number of dependants entitled to maintenance under this Act."

A conjoined reading of Section 3(b) and Section 20(3) of the Act, 1956 indicates that an unmarried daughter is entitled for maintenance from her parents till she is unmarried, in case, she is unable to maintain herself out of her own earnings or other property. The maintenance includes the reasonable expenses and incident to her marriage apart from food, clothing, residence, education and medical attendance and treatment. The obligation cast under Section 20 of the Act, 1956 is on both the parents. A daughter can claim maintenance from either of her parents, in case, she is unable to maintain herself or is unable to bear the expenses related to her marriage.

8. In the instant case, the appellant daughter had been left on her own by the father as soon as she attained majority. Even prior to that, only Rs. 1000/- was being paid to her by the father towards living expenses. The mother (wife of the respondent) had been awarded maintenance in the proceeding under Section 125 Cr.P.C. where she was getting a petty amount of maintenance for herself and her children. Apart from the appellant, there were other two children of the respondent who were also looked after by his wife only.

9. The respondent admittedly did not bear the responsibility of education of his children including the appellant herein. Somehow the appellant had been able to educate herself with the help of her mother and completed vocational Nursing course. Though it was the responsibility of the father to bear expenses of education including higher education of his daughter but the appellant has given up the said claim.

10. The only claim being pressed by the appellant is that at least the father should bear the expenses of her marriage as her mother has no such resources.

11. There is no denial of the said fact. The only reason given by the respondent to contest the petition under Section 20(3) moved by his daughter is that she got a job during the pendency of the said application and is earning Rs. 4500/-.

12. No plausible explanation could be offered by the respondent father as to why he did not discharge his responsibility towards his children. He never looked after them nor offered any kind of financial support. When the claimant appellant has somehow managed to study, her claim for maintenance is being contested on the ground that she has started earning during pendency of the application.

13. Section 23 of the Act, 1956 as extracted above provides the criteria for fixing the quantum of maintenance which shows that a comparison of income of both the parties has to be made by the Court while determining the amount of maintenance. The criteria which are required to be kept in mind are the position and status of the parties and the claimants own earnings or earning from any other source. The reasonableness of the demand of the claimant and the reason why the claimant is living separately, is also to be seen while assessing whether the demand is justified or not.

14. Having gone through the provisions of the Act, 1956 as also the factual position with regard to income and the status of the parties, we are of the considered view that petty amount of Rs. 4500/- being earned by the appellant cannot be a reason to reject her prayer for grant of maintenance towards education expenses as also marriage expenses. However, noticing that the appellant has given up her claim for expenses towards her education and only demands marriage expenses, we are of the considered view that the demand of the appellant is perfectly justified. We cannot oblivious of the fact that the respondent had never discharged his responsibility towards his unmarried daughter and did not borne her education expenses. The demand of Rs. 10 Lacs towards marriage expenses in the current scenario when the appellant is aged about 27-28

years cannot be said to unjustified or excessive.

The family court while rejecting the application under Section 20(3) of Hindu Adoption and Maintenance Act, 1956 has simply ignored that the applicant had incurred all expenditures towards her education, in pursuing nursing course and at no point of time, during the entire period, till and after she attained majority, her education and living expenses were borne by the father. The family court had completely ignored that the appellant has a right to claim expenses towards performance of her marriage from her father under the statute.

15. For the aforesaid, while setting aside the order dated 6.10.2017 being unjustifiable and unreasonable, we direct the respondent-father to pay Rs. 10 Lacs by submitting the demand drafts before this Court in two installments.

The first installment of Rs. 5 Lacs shall be paid by the respondent-father within a period of one month from today, i.e. on 22.11.2021 by presenting a demand draft before this Court.

The remaining second installment of Rs. 5 Lacs shall be paid within a further period of two months by presenting another demand draft before this Court.

The disposal of the present appeal would be subject to the payment made by the respondent-father as per the above schedule.

List this matter on 23.11.2021 in the additional cause list for compliance of the above directions.

(Krishan Pahal,J.)

(Sunita Agarwal,J.)

Order Date :- 21.10.2021

Brijesh