
(1998) 01 BOM CK 0026
In the Bombay High Court
Case No : Suit No. 4404 of 1996

Sangeeta Piyush Raj

APPELLANT

Vs

Piyush Chaturbhuj Raj

RESPONDENT

Date of Decision : 14-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 125, 151
Family Courts Act, 1984 — Section 7(2)
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 19, 20, 21, 22

Citation : AIR 1998 Bom 151 : (1998) 2 ALLMR 32 : (1998) 3 BomCR 207 :
(1998) 2 DMC 443 : (1998) 2 MhLj 301

Hon'ble Judges : M.B. Shah, C.J.; R.J. Kochar, J

Bench : Division Bench

Advocate : Sushma Singh, for the Appellant; Tejas G. Vora and Mrs. L.G. Vora,
for the Respondent

Judgement

M.B. Shah, C.J.—After considering the various decisions cited at the hearing of the Notice of Motion, by order dated 17th January, 1997, Variava, J., referred to the Division Bench the following two questions for determination:--

"1. Whether in proceedings u/s 18 of the Hindu Adoptions and Maintenance Act, the Court can grant interim maintenance?

2. Whether if matrimonial proceedings are pending between the parties then an application for interim maintenance must be made only to the Family Court under the provisions of section 24 of the Hindu Marriage Act?"

2. With regard to the first question, after considering the various decisions, the Division Bench of this Court (V.P. Tipnis & Mrs. R.R. Desai, JJ.) by judgment and order dated (16th and 17th December, 1997 in Appeal No. 14 of 1997) has arrived at the conclusion that, in a suit filed u/s 18 of the Hindu Adoptions and Maintenance Act, 1956, the Court has jurisdiction and power to pass appropriate interim and ad-interim orders. We agree with the said conclusion.

3. Further, it is to be noted that the Hindu Adoptions and Maintenance Act, 1956 codifies the law relating to adoptions and maintenance among Hindus. It only declares and codifies the law with regard to adoptions and maintenance by Hindus. The basis of such obligation to maintain wives, widowed daughter-in-law, children and aged parents may be a pious obligation of Hindus. The provisions relating to maintenance are in Chapter III. Section 18 deals with maintenance of a wife during her life time under certain circumstances, as provided in sub-section (2) thereof. Section 19 provides for maintenance of a widowed daughter-in-law to the extent that she is unable to maintain herself out of her own earnings or other property by her father-in-law. Similarly, section 20 provides for maintenance of his or her legitimate or illegitimate children and his or her aged or infirm parents. The liability to pay maintenance to children is on the father or mother. Similarly, liability to pay maintenance to infirm parents is on the son or the daughter. Section 22 further provides that the heirs of a deceased Hindu are bound to maintain the dependants of the deceased (as defined in section 21) out of the estate inherited by them from the deceased. Section 23 provides for the objective criteria for determining the amount of maintenance. Further, the requirement is that no person shall be entitled to claim maintenance if she or he has ceased to be a Hindu by conversion to any other religion (section 24). Section 25 empowers the alteration of the amount of maintenance on change of circumstances justifying such alteration. Further, the proceedings initiated for getting maintenance would be under the Civil Procedure Code. Hence, there is no reason why inherent jurisdiction of the Court cannot be exercised for providing interim maintenance. If a deserted wife, widowed daughter-in-law, minor children and aged parents are not provided with interim maintenance, it would cause lot of hardship for a long period. The entire purpose of the enactment would be defeated because of the proverbial delays in disposal of cases resulting in grave hardship to the applicants who may have no means to survive until final decree is passed. There is no provision under the Hindu Adoptions and Maintenance Act or under the CPC that interim maintenance cannot be granted; there is no provision under the said Act which would meet the necessities of the case in question. Therefore, for doing real and substantial justice, Court can exercise power u/s 151 of the CPC for grant of interim maintenance. It would also prevent abuse of the process of the Court.

4. Even in proceedings u/s 125 of the Code of Criminal Procedure, in the case of *Savitri v. Govind Singh Rawat* 1986 Cri. L.J. 411, the Court held as under :--

"Having regard to the nature of the jurisdiction exercised by a Magistrate u/s 125 of the Code, we feel that the said provisions should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance, subject to the other conditions referred to, pending final disposal of the application. In taking this view we have also taken note of the provisions of section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction

exercisable by Magistrates u/s 125 of the Code to the Family Courts constituted under the said Act."

For arriving at the above conclusion, the Court has observed that every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. The Court further observed that whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done, then that something else will be supplied by necessary intendment. In a civil suit filed for maintenance on the basis of the law applicable under the Hindu Adoptions and Maintenance Act, such power is required to be exercised. In our view, there is no reason not to apply the ratio laid down by the Supreme Court in Savitri's case (supra) to the question involved in the present case.

5. Re: The Second Question :

In our view, even if matrimonial proceedings are pending between the parties, it is not the requirement that the application for interim maintenance must be made only to the Family Court under the provisions of section 24 of the Hindu Marriage Act. Once we arrive at the conclusion that an application u/s 18 of the Hindu Adoptions and Maintenance Act is maintainable during the pendency of proceedings under the Hindu Marriage Act, then, obviously, the result would be that the application (or interim maintenance could be filed before the Court dealing with the right arising under provisions of section 18 of the Hindu Adoptions and Maintenance Act.

6. With regard to the provisions of section 18 of the Hindu Adoptions and Maintenance Act and provisions of the Hindu Marriage Act, the Apex Court, in the case of Chand Dhawan v. Jawaharlal Dhawari 1993(3) SCC 4061, has held that, without affection or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification u/s 18(1) of the Hindu Adoptions and Maintenance Act. She may also be entitled to relief u/s 125 of the Code of Criminal Procedure; but this is an alternative measure. The Court clarified that, in a petition under the Hindu Marriage Act, the Court is empowered to grant interim maintenance; but, in those cases where the marital status is to be affected or disrupted, then the Court would pass orders for maintenance. In other cases, the Hindu Adoptions and Maintenance Act would be applicable. Hence, in our view, even if matrimonial proceedings are pending between the parties in the Family Court, it is not necessary that for getting interim maintenance, an application must be made to the said Court under the provisions of section 24 of the Hindu Marriage Act.

7. We, however, make it clear that, once the interim maintenance is granted either u/s 24 of the Hindu Marriage Act or u/s 18 of the Hindu Adoptions and Maintenance Act, then, there is no question of entertaining the application under the other Act. This would avoid multiplicity of proceedings, because the criteria

for awarding maintenance under both the provisions would be the same.

8. Reference stands disposed of accordingly.