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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.4054 OF 2020

Sardool Singh Sucha Singh Matharoo .... Petitioner

Vs.

Harneet Kaur widow of Bhupinder Singh Matharoo & Anr. Respondents

Mr. Bipin Joshi a/w Mr. Prayag Joshi for Petitioner
Mr. G.L. Bajaj for Respondent

Coram : NITIN W. SAMBRE, J.
Date : 7th September, 2020

P.C.:

1. Heard the respective counsel.

2. The petitioner takes an exception to the order dated 28th January 2020 passed by the Family Court No. 3, Bandra, Mumbai below Exhibit 15, an application for grant of interim maintenance in Petition No. C-69 of 2018.

3. The facts necessary for deciding the present petition are as under :

The petitioner was blessed with two sons. Late Bhupinder, who was married to respondent no. 1 on 12th December, 2004 and died on 21st May, 2015. Respondent no.2, son was born out of the above marriage.

The mother of respondent no.1 died in the year 2016, whereas her father died in February, 2017. It is her case that she has no independent source of earning and she and her son are completely dependent on the earnings of the petitioner.

4. It is, in this background, respondent no.1 preferred the proceedings under Sections 19 and 22 of Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as "the Act" for the sake of brevity) with a prayer for grant of maintenance of Rs.1,50,000/- per month to petitioner no.1 and Rs.50,000/- to petitioner no.2 to the petition before the Family Court.

5. The claim was resisted by the present petitioner- original respondent thereby alleging that apart from the fact that the present

petitioner is paying maintenance to the respondents and has provided accommodation, an expenses of Rs.90,000/- are incurred by the petitioner so as to meet day-to-day requirement, educational expenses etc.. The break-up to that effect has been given in the reply filed to the main petition before the Family Court.

6. Since the respondent no.1 claimed to have neglected to maintain by the petitioner, the application Exhibit 15 seeking interim maintenance under Section 19 of the Act came to be moved claiming Rs.1,00,000/- per month for respondent no.1 and Rs.50,000/- per month to respondent no.2, son.

7. Vide impugned order dated 28th January 2020, the Family Court has allowed the prayer partly and granted maintenance of Rs.40,000/- per month to respondent no.1, whereas Rs.30,000/- per month to respondent no.2. As such this petition.

8. Learned counsel for the petitioner-original respondent would invite attention of this Court to the provisions of Section 19,

Proviso to Sub-Section(2) of the Act so as to claim that the maintenance ought to have been claimed by the respondent no.1 only after demonstrating that she was unable to maintain herself from her own earnings or from the estate of her parents.

9. Shri. Joshi, learned counsel appearing for the Petitioner would urge that the aforesaid legal provision is ignored by the Court below while allowing the application and that being so, the order goes contrary to the provisions of Section 19 of the Act.

10. Further submission is even if presuming that the respondents are entitled for maintenance, still fact remains that exorbitant maintenance is awarded, as the Court below have failed to consider the liability of the petitioner to maintain himself, who was a cancer patient, his aged wife, his other son and his family.

11. Shri. Joshi would also invite attention of this Court to the fact that the respondents are provided with accommodation in the house owned by the petitioner. According to Shri. Joshi, the petitioner

is incurring expenses about Rs.95,000/- per month on the respondents. Shri. Joshi then would urge that the award of maintenance is as such completely disproportionate to the known source of income of the petitioner. According to the learned counsel for the petitioner repayment of bank loan is already overdue and that being so, the order impugned is liable to be quashed and set aside.

12. By inviting attention of this Court on the judgement as reported in BCR (2008) Volume 5, page 441 in the case of Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patil & Ors., Shri. Joshi has tried to substantiate his submissions that the respondent no.1 has not discharged his initial burden contemplated under the proviso to Section 19 of the Act and further claimed that the maintenance ought not to have been awarded.

13. Per contra, Shri. Bajaj, learned counsel for the respondent supported the impugned order and and would urge that the order is based on the admissions as are traced in the written statement as to income of the petitioner. Shri. Bajaj would also rely on the Income-tax return submitted by the petitioner for the assessment year 2018-2019.

14. Considered rival submissions.

15. At the outset, it is required to be submitted that the plain reading of Section 19 of the Act contemplates that the respondents have every right to claim the maintenance after the death of husband from the estate inherited by her father-in-law i.e. the present petitioner. That proviso to Sub-Section (1) of Section 19 contemplates that the respondent has to demonstrate that she on her is unable to maintain herself. It is in this eventuality she can claim maintenance from the estate of her husband, still fact remains that the said burden can be discharged by respondent no.1 at an appropriate stage. The object with which the provision is made in the statute book for grant of interim maintenance cannot be ignored.

16. At this stage, what was required to be appreciated by the Court below and rightly so appreciated by the Family Court in the impugned order is whether there was neglect to maintain and whether the respondents are entitled for maintenance from the petitioner in view of Section 19 of the Act.

17. The Family Court has relied on the statement made in the written statement by the present petitioner that the income per month of the petitioner from the HUF property is Rs.1,28,000/-.

18. Apart from above, the Court cannot be oblivious to the fact that the income of the petitioner for the assessment year 2018-2019 as was reflected in the income-tax return was Rs,74,87,007/-

19. That being so, it cannot be at this stage presumed that the maintenance is disproportionate to the legal source of income of the petitioner. Rather the maintenance awarded to the respondent no.1 to the tune of Rs.40,000/- and to respondent no.2, grandson of Rs.30,000/- appears to be justified, considering the income drawn by the Petitioner as reflected in the hereinabove.

20. Apart from above, this Court cannot see any material illegalities so as to infer that the order impugned runs contrary to the scheme of Section 19 of the Act. That being so, no case for interference is made out. Petition fails, dismissed.

21. Needless to clarify that the observations made hereinabove are confined to the extent of adjudicating the rights of respondent no.1 for grant of interim maintenance. While deciding final proceedings, the Court shall not be influenced by the findings recorded hereinabove as same be decided on its own merits.

(NITIN W. SAMBRE, J.)

Bhalchandra G. Dusane

Digitally signed by Bhalchandra G. Dusane
Date: 2020.09.08 17:19:57 +0530