

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 387 of 2023

Appellant :- Harishchandra

Respondent :- Smt. Snehlata

Counsel for Appellant :- Arvind Agrawal

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Heard Sri Arvind Agrawal for the appellant and perused the record.
2. The present appeal has been filed carrying the delay of about four weeks. Keeping in mind the nature of delay, cause shown is sufficient. Hence, delay is condoned.
3. Delay Condonation Application no.1 of 2023 is allowed. Office to allot regular number to the appeal.
4. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from order dated 16.08.2023 passed by the Additional Principal Judge, Court No.2 Family Court, Firozabad, in Case No.11 of 2019 arising under Section 19 of the Hindu Adoption and Maintenance Act, 1956. By that order, the learned Court below has awarded monthly maintenance at the rate of Rs.3000/- to the opposite party and Rs.2000/- per month for her minor daughter. Both the amounts have been awarded from the date of order. One time legal expense of Rs.5000/- has also been awarded.
5. Having heard the learned counsel for the appellant and having perused the record, we find no ground to offer interference with the order of learned Court below. Though the second marriage of the respondent had been set up and an issue had been framed in that regard, finding returned by the learned Court below categorically shows that no such marriage ever took place. In reaching that finding, the learned lower Court below has relied on the statement of the present appellant

Harishchandra P.W.-1, who did not prove the occurrence of such marriage. In fact, he stated that the respondent had been married to his elder son, namely, Rohit who suffered untimely sudden death. In that circumstance, the appellant disputed occurrence of marriage between the respondent with his second son.

6. In view of finding recorded by the learned Court below, the plea that had been set up by the respondent at the earlier stage of the proceeding claiming marriage of the younger son of the present appellant namely, Mohit is of no relevance. Once the learned Court below has reached the conclusion, based on the evidence brought before it that the respondent was never married to Mohit, her status remains that of widow of Rohit. In that light, there is no defect in the proceedings instituted by the respondent seeking maintenance from the present appellant who happens to be her father-in-law.

7. Considering the fact that contain minimum amount is necessary to be provided to sustain human life with minimum dignity, the award of monthly maintenance at the rate of Rs.3000/- per month to the respondent and Rs.2000/- per month to the daughter of the respondent, that too from the date of order, is neither excessive nor arbitrary.

8. In view of the above, the present appeal merits no interference by this Court. Accordingly, the present appeal is disposed of with the following directions :

(i) Subject to the appellant furnishing adequate security to the tune of Rs. 2,00,000/- to the satisfaction of the court below in the shape of other than cash or bank guarantee by 30th November 2023, no coercive measure shall be adopted against the appellant, subject to other conditions provided herein. The appellant may deposit Rs. 5,000/- towards legal expense within the same time.

(ii) As to the balance amount of Rs.15,000/- being arrears of maintenance for a period of three months, the appellant shall deposit the same in three equal installments of Rs. 5,000/- each be deposited by him before the learned court below on or before 30th November, 2023, 31st December, 2023 and 31st January, 2024.

(iii) The appellant shall continue to pay to the respondent or deposit before the learned court below, monthly maintenance allowance from the period November 2023 onwards as and when it becomes due under the terms of impugned order.

9. Any amount already deposited by the appellant may be adjusted towards payment/s to be made by the appellant towards the last installment/s.

10. All the amounts may be either paid to the respondent, directly or be deposited by the appellant with the learned court below within time indicated above. In the latter case the amount/s shall be released to the respondent, forthwith.

11. However, it is made clear, in the event of failure on part of the appellant to comply with any part of the order, coercive measures be revived from that stage without any further reference to this Court.

12. Subject to due compliance of this order for a period of two years, security furnished by the appellant may be released.

Order Date :- 28.10.2023

SP/-

(Syed Aftab Husain Rizvi,J.) (Saumitra Dayal Singh,J.)