

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: May 28, 2015.

+ MAT.APP.(F.C.) 16/2014

NAVEEN NANGIA Appellant

Through: Mr.S.D.Wadhwa, Advocate.

versus

CHITRA GAUBA NANGIA Respondent

Through: Mr. Ashish S. Kulshrestha, Mr.
Manish Shrivastava and Mr. Lalit
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. Challenge in the present appeal is to the order dated 27.09.2013, passed by the learned Family Court, Saket, New Delhi whereby the learned Family Court has disposed of two applications preferred by the respondents, i.e., one under Section 24 and the other under Section 26 of the Hindu Marriage Act, 1955.

2. While addressing arguments in support of the present appeal, learned counsel for the appellant has confined his arguments to the very ineligibility of the minor son for the grant of maintenance after his

attaining the age of majority. Contention raised by the learned counsel for the appellant is that the minor son namely – Shlok was born out of the wedlock of the parties on 2nd September 1996 and thus he had attained majority on 1st September 2014 and therefore, after having attained the age of majority, the minor child is not entitled for the grant of maintenance in terms of Section 26 of the Hindu Marriage Act, 1955 (hereinafter referred to as the ‘HMA’). No other arguments were addressed by learned counsel for the appellant on the other contentions raised in the present appeal.

3. The aforesaid contention has been strongly refuted by the learned counsel for the respondents who submits that even after the child attains the age of majority, he would still be entitled to the grant of maintenance as the father cannot shirk his responsibility to maintain his child. The contention raised by the learned counsel for the respondents is that the son is just 18 years of age and for his day to day requirements and educational expenses, he is equally dependent upon the appellant and he cannot throw this responsibility wholly on the frail shoulders of his mother. Counsel also submits that so long as the child does not attain the economic independence so as to earn livelihood, it is the obligation of the

father to take care of all his expenses. In support of his arguments, the learned counsel for the respondents placed reliance on the following judgments:-

- a) Jayvardhan Singh Chapotkar v. Ajayveer Chapotkar, Civil Writ Petition no. 2117 of 2012 decided on 8th April 2014.*
- b) Kirti Malhotra (Smt.) vs. M.K. Malhotra, 1995 Supp (3) SCC 522.*

4. By the aforesaid common order passed by the learned Family Court a sum of Rs.10, 000/- was awarded as maintenance to the minor child from the date of filing of the petition i.e. 29.3.2011 till the date he attains the age of majority. The learned Family Court had also awarded a sum of Rs.15,000/- to the respondent wife towards litigation expenses.

5. As can be seen from the perusal of the said order, the maintenance has been awarded in favour of the child only till the date he attains the age of majority. Indisputably, the child has attained the age of majority on 1st September, 2014 and therefore in our view he is not entitled to the grant of any maintenance amount from the date when he attained the age of majority.

6. Section 26 of the HMA empowers the Court to make provisions for maintenance of only minor children and therefore to grant maintenance in

favour of the adult child would be beyond the scope of Sections 24 and 26 of the Hindu Marriage Act, 1955. Proper legal course in such a situation would be to seek maintenance under Section 20 of the Hindu Adoption and Maintenance Act, 1956 and not under Section 24 and 26 of the HMA (***Ref: Katarchand Dalliram Jain v. Smt. Taravati Katarchand Jain, AIR 1982 Bom 15***). The relevant provision for awarding maintenance in favour of the minor child can be found under Section 26 of the HMA and the same is reproduced as under:-

“26 Custody of children. —In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]”

7. The case of ***Jayavardhan Singh (supra)*** referred to by the learned counsel for the respondent does not support the case of the respondent as the Hon’ble Bombay High Court in this case had held that the major child

would get maintenance under section 20 of the Hindu Adoption and Maintenance Act, 1956 and not under Section 26 of the HMA. The relevant paras of which are:

“ In view of this, this Court is of the opinion that since the father i.e. the respondent is well placed financially, it would be incumbent upon him to bear educational expenses of his son till he is able to earn his own living or till he completes his education. This is in fact, a concession to a major son and therefore, the Petition filed by the Petitioner deserves to be allowed.

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In the opinion of this Court, taking into consideration the status of the parties, the Petitioner herein would be entitled to educational expenses at the rate of Rs. 15,000/- from the date of his application under Section 20 of the Hindu Adoption and Maintenance Act for a limited period from the date of this order i.e. till October, 2014. The amount paid so far at the rate of Rs. 15,000/- pursuant to the judgment and order passed by the Division Bench shall be included in the present case and the amount of Rs. 15,000/- granted by this Court in the present Writ Petition is not in addition to the amount granted by the Hon'ble Division Bench of this Court vide judgment and order dated 11.10.2013 which has been upheld by the Hon'ble Apex Court.”

8. Section 26 of the HMA makes it amply clear that the jurisdiction of the Court to pass an order of maintenance is restricted to a minor child alone and once the child attains the age of majority, the provision of section 26 of the HMA in so far as awarding of the maintenance is concerned, would cease to apply (***Ref: Smt. Alka Bhaskar Bakre v. Bhaskar Satchidanand Bakre, AIR 1991 Bom 164***).

9. In the light of the settled legal position, we are of the view that the

appellant is not liable to pay the maintenance amount in favour of the child after the child has attained the age of majority. Even the impugned order passed by the learned Family Court is also on the same lines.

10. In the circumstances of the present case, no further directions are warranted in this case except to say that the appellant shall not be liable to pay an amount of interim maintenance in favour of the child, as he has already attained the age of majority. It goes without saying that this order will not come in the way of the respondent or the child to seek other remedies, as are available to them under the law.

11. The present appeal accordingly stands disposed of.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

May 28, 2015
Pkb/v