

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 103 of 2015**

- Arial I Kumar S/o Late Ismail Kumar (Dead) Represented Through

1. Rahbariya Kumar Aged about 70 Years W/o Late Ismail Kumar
2. Ervin Enesh Kumar Aged about 40 Years S/o Late Ismail Kumar
3. Lidiya Kumar Aged about 50 Years D/o Late Ismail Kumar
4. Minakshi Kumar Aged about 43 Years D/o Late Ismail Kumar

All R/o Pappu S. T. D., Christian Colony, Sarvamangala Road,
Tehsil And Dist- Korba, Chhattisgarh (Non-Applicants)

---- Appellants**Versus**

- Shrimati Shikha Kumar W/o Late Arial I Kumar Aged About 40 Years R/o Near M. P. Housing Board Colony, Tehsil- Kumhari, Dist- Durg, Chhattisgarh (Applicant)

---- Respondent

For Appellants
For Respondent

None
Shrimati Shikha Kumar, Respondent in person.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Order On Board By**Prashant Kumar Mishra, J.**

07/11/2016

1. This appeal is directed against the order passed by the Second Additional Principal Judge to the Court of Family Court, Raipur on 03.07.2015 directing the appellants to pay a sum of Rs.2,000/- per month as maintenance.
2. No one appears for the appellants even in the second round, however, since the respondent is appearing in person, we examined the record to dispose of the matter finally.
3. The parties were married according to the Christian Law on 26.05.2005. Because of differences, the respondent wife had to prefer an application under Section 10 (vii) of the Divorce Act, 1869 bearing Civil Suit No.133A/2007, which was allowed by the trial Court by judgment and decree dated 20.06.2008. By the said judgment, the respondent's application for grant of divorce and permanent alimony was allowed and she was held entitled for a sum of Rs.2,000/- per month as permanent alimony. The husband died on 04.12.2012, therefore, the decree for permanent alimony was not complied with. The respondent moved an application for execution of the decree, against the legal heirs of the husband, who are in possession of the properties belonging to the deceased. The Executing Court allowed the application holding and directing the appellants to be liable to pay the amount of permanent alimony to the

respondent.

4. The respondent Shrimati Shikha Kumar would submit that her husband owned immovable properties at Korba and Mahasamund; the amount under various insurance policies in the name of the deceased husband have been received by the appellant No.2 Ervin Enesh Kumar. He has also received the amount paid by the Oriental Insurance Company and thus the appellants are in possession of huge amounts and properties belonging to the deceased, therefore, the Family Court should have directed for recovery of the amount from the assets belonging to the deceased, which are presently in possession of the appellants. She would also submit that she is entitled to all properties left by the deceased and further that the appellants deserve to be prosecuted for submitting false affidavit before the Court.
5. In the matter of **Mrs. Aruna Basu Mullick vs. Mrs. Dorothea Mitra**¹, it has been held by the Supreme Court that a decree for alimony passed under Section 37 of the Special Marriage Act, 1954 does not extinguish with the death of the husband/judgment debtor. The assets left behind by him are liable to be proceeded against in the hands of his legal heirs for satisfaction of the decree for maintenance. It is further held that there is no rationality in

¹ AIR 1983 SC 916

the contention that a decree for maintenance or alimony gets extinguished with the death of the husband when any other decree even though not charged on the husband's property would not get so extinguished. A decree against the husband is executable against the estate of the husband in the hands of the heirs and there is no personal liability.

6. By the impugned judgment, the Executing Court has held the appellants to be liable to pay the amount of permanent alimony of Rs.2,000/- to the respondent. The proper course for the Executing Court should have been to direct the parties to provide full particulars of all the movable and immovable properties belonging to the deceased so that the amount of permanent alimony, which is a charge on the estate of the deceased, is recovered from those properties because the appellants may not be personally liable to pay permanent alimony to the respondent, but they are liable because they are in possession of the assets of the deceased.
7. The law laid down by the Supreme Court in the matter of **Mrs. Aruna Basu Mullick** (supra) has been reiterated by the Supreme Court and followed in the matter **Smt. Nandarani Mazumdar vs. Indian Airlines and others**².

² AIR 1983 SC 1201

8. For the foregoing, we are of the considered opinion that the matter deserves to be remitted back to the Family Court/Executing Court to proceed to recover the amount of permanent alimony from the movable and immovable assets belonging to the deceased. It will remain open for the respondent wife to apply for enhancement of the amount, if she so desires, as also for prosecuting against any of the appellants who, according to the respondent wife, have submitted false affidavit or have tried to mislead the Court.
9. Till the Executing Court proceeds to decide the matter finally, the appellants are restrained from alienating or creating any third party interest on the immovable properties belonging to the deceased, which is presently in their possession.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Anil Kumar Shukla