

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4834-2013

DATE OF DECISION:22.04.2016

CHAIN SINGH

...Petitioner

Versus

HARDEEP KAUR

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present:- Mr. S.S.Salar, Advocate for the appellant.

Mr. Sanjeev Sharma, Advocate for the respondent.

M.JEYAPPAUL, J.(ORAL)

Respondent Hardeep Kaur filed a petition before the trial Court under Section 25 of the Hindu Guardian and Wards Act 1890(wrongly referred to as Hindu Guardian and Wards Act 1956) seeking maintenance from the appellant who is the father-in-law of the respondent.

It was submitted by the learned counsel appearing for the appellant that it may not be an impediment for the parties to canvas for relief before the Court, even if they have quoted wrong provision of law, but they should come out with proper pleadings concerning the relief sought.

As rightly pointed out by the trial Court, the respondent instead of quoting the provision under Section 19 of the Hindu Adoption and Maintenance Act 1956 has wrongly referred in the petition the provision under Section 25 of the Guardian and Wards Act 1890. Of course, such wrong reference to the Act and provisions of law are really

condonable inasmuch as the parties cannot be shown the doors simply on that score, but as rightly pointed out by the counsel appearing for the appellant, proper pleadings should be made to enable the other side to respond to the pleadings effectively.

We assume that the respondent has in fact sought for maintenance only invoking the provisions under Section 19 of the Hindu Adoption and Maintenance Act 1956. Two aspects will have to be specifically pleaded by the respondent while making a claim under Section 19 of the said Act. Firstly, she will have to plead that she was unable to maintain herself out of her own earnings or other property. Secondly, even if she has no property of her own she has to specifically plead that she was unable to obtain maintenance from her father or mother or from her son or daughter, if any, or his or her estate. Only if such pleadings have been set up by the respondent, the appellant would have an opportunity to rebut those pleadings.

In the instant case, as there was no proper pleadings made by the respondent in the petition filed by her seeking maintenance. As a result the appellant has lost an opportunity to rebut effectively the claim made by the respondent.

In view of the above, we are of the considered view that the trial Court has committed an error in awarding maintenance even in the absence of proper pleadings. Therefore, we set aside the impugned order passed by the trial Court. Consequently, the appeal is allowed with liberty to the respondent to file a fresh petition under Section 19 of the Hindu Adoption and Maintenance Act 1956 with proper pleadings on the same cause of action within two months. The trial Court is directed

to dispose of the petition, if any, filed under the above provision of law by the respondent within six months from the date of filing of such a petition. The District Judge, Panchkula is also directed to provide Legal Aid to the respondent herein.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ MOHAN SINGH)
JUDGE**

April 22, 2016
Sunil Devi