

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 196 of 2016**

- Vinod Agrawal S/o Ramrichpal Agrawal, Aged About 50 Years,
R/o 1358, 7 Star Lane, Gokulpeth Nagpur (M.S.)
(Non-Applicant)

---- Petitioner**Versus**

1. Lilesh W/o Vinod Agrawal, Aged About 42 Years
2. Ku. Ishika, D/o Vinod Agrawal, Aged About 14 Years
3. Ku. Palakh, D/o Vinod Agrawal, Aged About 12 Years,

Respondent No.2 & 3 are minor through Natural Guardian
Mother Lilesh, All R/o C/o Heerachandji Agrawal Than
Khamariya, Near Hanuman Mandir, District- Bemetara,
Chhattisgarh(Applicants)

---- Respondents

For Appellant
For Respondents

Shri P. R. Patankar, Advocate
Shri Vivek Singhal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board****28/06/2017**

1. Appellant husband is aggrieved by the order of maintenance allowed in favour of respondents, whereby each of the respondents has been granted maintenance of Rs.5,000/- per month in exercise of powers under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (henceforth 'the Act,

1956').

2. At the outset, Shri Patankar, learned counsel for the appellant, would submit, on instructions, that the appellant withdraws this appeal in respect of the amount of maintenance awarded in favour of his daughters namely, respondent No.2 Ku. Ishika and respondent No.3 Ku. Palakh. He would restrict challenge in this appeal to the maintenance awarded in favour of his wife, the respondent No.1, who is a divorced wife and the decree of divorce has been maintained by the Supreme Court also.

3. It is argued that at the time of passing of the impugned order, the order of grant of permanent alimony of Rs.5.00 Lakh was under challenge before the Supreme Court and the amount having not been received by the wife, though tendered by the appellant to her, the trial Court has not considered the impact of the amount of permanent alimony. He would draw attention of the Court to the order dated 09.03.2017 in this appeal, wherein the respondents' counsel has received the amount of permanent alimony of Rs.5.00 Lakh and further amount of Rs.1.00 Lakh towards satisfaction of the arrears admissible to the respondents under the impugned order, which, in fact, was paid on 19.04.2017. He would also submit that by order dated 05.11.2016, the JMFC, Saja, District Bemetara, the authority under the Protection of Women From Domestic Violence Act, 2005 (henceforth' the Act, 2005'), has passed an order allowing maintenance of Rs.4,000/- to respondent No.1,

Rs.2,000/- each to the daughters and shelter amount of Rs.2,000/- to all of them. This subsequent event is also required to be considered to determine the amount of compensation, to which the respondent No.1 is entitled in law, if any.

4. Admittedly, the application for grant of divorce moved by the appellant has been allowed by the Family Court No.2, Nagpur on 13.06.2012 in Petition No.A.524/2009, which has been affirmed by the High Court of Bombay, Nagpur Bench in Family Court Appeal No.204/2014, decided on 08.07.2015, against which SLP (C) No.28498/2015 has been dismissed by the Supreme Court on 09.12.2016.
5. A reading of the impugned order, particularly para 15 of the order, would indicate that before the trial Court the respondent No.1 argued that the grant of decree of divorce and permanent alimony of Rs.5.00 Lakh is under challenge before the Supreme Court. Thus, it appears, the amount of permanent alimony of Rs.5.00 Lakh having not been paid to the respondent No.1 on the date of passing of the impugned order dated 25.06.2016, the effect of receipt of the amount of Rs.5.00 Lakh has not been properly addressed by the trial Court. Similarly, by order dated 19.11.2016, the JMFC, Saja has also passed an order of maintenance under the Act, 2005, although the said order is assailed in appeal preferred by the appellant.

6. In view of the above, it appears, the subsequent event of payment of Rs.5 Lakh as permanent alimony and the proceedings arising out of the order passed by the JMFC, Saja under the Act, 2005 are relevant for deciding the respondent No.1's entitlement to obtain maintenance and quantum thereof under Section 18 of the Act, 1956. Therefore, instead of keeping this appeal pending, we deem it appropriate to decide it finally at this stage in the following manner:-

I) The order of maintenance allowed in favour of respondent No.2 (Ku. Ishika) and respondent No.3 (Ku. Palakh) at the rate of Rs.5,000/- per month is affirmed. The order of maintenance passed in favour of respondent No.1 Lilesh is set aside and the matter is remitted back to the trial Court for consideration afresh keeping in view the order of permanent alimony and the order by the JMFC, Saja under the Act, 2005, if the said order is duly complied with by the appellant.

II) Since the appellant was proceeded *ex parte* by the trial Court while deciding the application in respect of respondent No.1 wife, the trial Court shall give opportunity to lead evidence to both the parties.

III) Both the parties may also amend their respective pleadings, if they so desire.

7. Before parting with this case, it is made clear that this Court has not expressed any opinion on merits regarding the respondent No.1's entitlement or otherwise under Section 18 of the Act, 1956, which is to be determined by the trial Court on its own merits and keeping in view the subsequent events.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel

Nirala