

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.3488 of 2015(O&M)

Date of decision: 7.11.2017

Amarjit Kaur and anotherPetitioners

VERSUS

Bikkar Singh @ Bikramjit Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.K. Garg, Advocate for the petitioners.

Mr. Varun Jain, Advocate for respondent No.1.

REKHA MITTAL, J.

Challenge in the present petition has been laid against order dated 31.03.2015 (Annexure P-4) whereby application under Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') dated 03.08.2010 (Annexure P-2) filed under Section 25 of the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act') for alteration/enhancement of maintenance allowance granted vide judgment and decree dated 21.05.2005 (Annexure P-1) and marriage expenses for petitioner No.2 and respondent No.2 (performa) has been dismissed being not maintainable.

A brief backdrop of the case is that the petitioners and respondent No.2 filed a petition by invoking the provisions of the Act claiming maintenance from Bikkar Singh, husband of Amarjit Kaur and father of Sandeep Kaur and Ranvir Kaur. The petition culminated in the judgment and decree dated 21.05.2005 (Annexure P-1) passed by the Civil Judge (Junior Division), Malerkotla whereby each of the petitioners therein were allowed maintenance at the rate of Rs.1500/- per month from the date

of filing of the suit and the same was held to be first charge on suit property of the respondent/defendant. The petitioners and perform respondent No.2 filed the instant application (Annexure P-2) for enhancement of maintenance amount and marriage expenses to the tune of Rs.15 lakhs for each of the daughters of Bikkar Singh. Respondent filed reply to the application raising certain preliminary objections including the objection with regard to the application being not maintainable. The trial Court after having heard counsel for the parties at length and by relying upon judgment of the Patna High Court **Binda Prasad Singh Vs. Smt. Mundrika Devi and another, AIR 1968 (Patna) 196** recorded a finding in para 13 of the order impugned that application under Section 151 CPC for alteration/enhancement of maintenance allowance is not maintainable and the applicants were required to file a separate suit for alteration of the amount fixed vide judgment dated 21.05.2005.

The precise question that calls for determination is whether Amarjit Kaur and others can seek alteration of maintenance determined vide judgment and decree dated 21.05.2005 by filing an application under Section 151 CPC or they are required to file an independent suit for the relief claimed.

Counsel for the petitioners has submitted that Section 25 of the Act makes a provision for alteration of amount of maintenance under changed circumstances. It is argued with vehemence that if the petitioners are obligated to file an independent suit for enhancement of maintenance, there would be no meaning for containing a provision in the Act providing for alteration of maintenance under changed circumstances. It is further argued that this Court in **Gurbaksh Kaur and another Vs. Bhajan Singh**

@ Gurcharan Singh, RSA No.1445 of 2009 decided on 02.04.2009 has affirmed findings of the first Appellate Court whereby it was held that the suit as framed was not competent and set aside the decree passed by the trial Court. It is further argued that in view of the aforesaid judgment, the remedy resorted to by the petitioners cannot be said to be faulty or the application being not maintainable.

Counsel for the contesting respondent, on the other hand, has supported the impugned order by relying upon judgment of the Patna High Court in **Binda Parsad Singh's case** (supra). He has further referred to judgments of this Court **Gurnam Singh Vs. Paramjit Kaur, 2016(4) PLR 232.** Further reference has been made to another judgment of this Court **Yash Pal Vs. Kaushal Rani and another, 2013(2) RCR (Civil) 52.**

Before advertng to the submissions made by counsel for the parties, it is appropriate to recapitulate the provision of Section 25 of the Act extracted hereunder:-

“25.Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.”

Perusal of the aforesaid extract leaves no manner of doubt that nothing has been provided in Section 25 of the Act if such alteration can be made by merely filing an application by either of the parties to the decree. Section 25 only speaks of a remedy being available for alteration of maintenance on change of circumstances. It is difficult to comprehend that a decree passed in a suit can be amended by way of application for alteration of maintenance. If the amount is fixed by an agreement, it can be

altered by an agreement or a decree of appropriate Court in a suit instituted by a party to the agreement. If the amount of maintenance is fixed by a decree but the decree does not make a provision for modification or amendment of the decree in future, it is difficult to accept contention of the petitioners that the decree that has attained finality can be modified by the Court on the basis of an application for alteration/enhancement of maintenance. However, if there is a stipulation in the decree that any party can seek the alteration of maintenance under changed circumstances, the application for alteration is the appropriate remedy seeking alteration of maintenance in the changed scenario. That being so, I agree with the ratio laid down in **Binda Prasad Singh's case** (supra) with which this Court has agreed in absolute terms in **Gurnam Singh's case** (supra).

In **Gurbaksh Kaur and another case** (supra), a Single Bench of this Court has held that reading of Section 25 of the Act would show that enhancement has to be claimed by moving an application before the same Court which granted maintenance and not by way of a fresh suit. However, the Court has not adverted to the question as to whether a decree that has attained finality can be modified on the basis of an application filed by either of the parties to the earlier decree. As discussed hereinbefore, I have expressed my agreement with the observations made in **Binda Prasad Singh's case** (supra), as it appears that the view taken by the Patna High Court in the year 1968 is the correct one, therefore, I do not find any reason to differ with the findings recorded by the Court below.

For the foregoing reasons, the petition fails and is accordingly dismissed. The petitioners shall be at liberty to take recourse to

appropriate remedy in accordance with law for pressing their claim for enhancement of maintenance/marriage expenses etc.

NOVEMBER 7, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no