

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 217 of 2019**

- Kumari Geeta Agrahari S/o Late Gopi Nath Agrahari Aged About 36 Years
Caste- Vaishya, R/o Near Torwa Main Raod, P.S. Torwa, District- Bilaspur,
Chhattisgarh

---- Appellant**Versus**

1. Kamta Prasad Agrahari S/o Late Gopinath Agrahari Aged About 40 Years R/o
Bhagwana Tyre Shop, Main Raod Torwa, P.S.- Torwa, District- Bilaspur,
Chhattisgarh
2. Manoj Agrahari S/o Late Gopinath Agrahari Aged About 35 Years R/o
Bhagwana Tyre Shop, Main Raod Torwa, P.S.- Torwa, District- Bilaspur,
Chhattisgarh
3. Sanjay Agrahari S/o Late Gopinath Agrahari Aged About 30 Years R/o
Bhagwana Tyre Shop, Main Raod Torwa, P.S.- Torwa, District- Bilaspur,
Chhattisgarh

--- Respondents

For Appellant	:	Mr. Praveen Dhurandhar, Advocate.
For Respondents No.1&2	:	Mr. Anupam Sharma, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****17/12/2019**

Heard.

1. This appeal is directed against order dated 27.04.2019 passed by the learned Additional Principal Judge, Family Court, Bilaspur, District-Bilaspur (C.G.), whereby the learned Family Court rejected the application filed by the appellant under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act of 1956').
2. At the outset, learned counsel for the appellant, shortening his argument, submits that initially the appellant had moved an application under Section 22 of the Act of 1956, seeking maintenance in her capacity as sister. Later, on a

legal advice, the application was converted into that under Section 20(3) of the Act because the appellant was seeking maintenance from her mother also. In course of time, mother died. Thereafter, learned Court below dismissed the application as not maintainable under Section 20, without allowing the appellant to convert her application under Section 22, as a result of subsequent event of death of her mother. The submission of learned counsel for the appellant is that in such an eventuality, an opportunity ought to be granted to the appellant to suitably amend the application to claim maintenance under Section 22 of the Act of 1956 allowing the parties to lead oral and documentary evidence and instead of deciding the case on merits, the case was dismissed on the ground of it being not maintainable.

3. Learned counsel for the respondents No.1&2, on the other hand, submits that after the death of the mother, it was open for the appellant to move suitable amendment application and pray for relief under Section 22 but no such application was filed. Therefore, the Court below was left with no option but to decide the case as it stood before it. It is submitted, on the face of provisions contained in Section 20(3) of the Act of 1956, relief of maintenance could not be granted under the said provision against the brothers only and even if the application is maintainable originally claimed, relief could not be granted after the death of mother, under Section 20(3) of the Act of 1956.
4. We have heard learned counsel for the parties.
5. Records of the case also shows that initially the application was filed by the appellant as one under Section 22 of the Act of 1956. Later on, the appellant amended the application and proceedings were converted under Section 20 of the Act of 1956 because the relief of maintenance was sought not only against the brother but also against the mother and undisputedly, later on, mother died during the pendency of the application. The learned Court below, in these circumstances, held that application under Section 20(3) was not maintainable.
6. Even if, we accept the view of the learned Court below that against brother only, maintenance could not be granted under Section 20(3), learned Court below ought to have considered and decided the application in accordance with the provisions of law without adhering the technicalities. The title of the

application, it is well settled, is not decisive of the nature of the proceeding. Initially, the application was filed under Section 22 of the Act and later on, it was converted under Section 20(3). This was because maintenance was prayed for by the appellant, an unmarried daughter of late Smt Bhagwana Devi and sister of respondent-Kamta Prasad, Manoj and Sanjay. As long as mother was alive, application under Section 20(3) was maintainable. It is equally correct on the part of the learned Court below that application under Section 20(3) would not be maintainable against brothers. The learned Court below ought to have seen that such relief in such a petition for grant of maintenance against brother was provided under Section 22 of the Act. The Court below adopted a hyper technical approach and going only by title of the application, rejected the application, without making any inquiry with regard to entitlement under Section 22. Accordingly, the impugned order is set aside and the matter is remitted to the Family Court to examine appellant's case to get maintenance under the provisions contained in Section 22 of the Act and decide the same on the basis of provisions contained in Section 22, taking into consideration the oral and documentary evidence, pleadings and oral and documentary evidence led by both the parties.

7. Records of the case be sent back forthwith to the trial Court. Decree be accordingly drawn.
8. The parties shall appear before the Court below on 17th of February, 2020 and thereafter, proceedings shall continue in accordance with law.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge