

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1800 of 2019**

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Abhishek Kumar Son of Late Jitendra Prasad Srivastava Resident of Shree Kunj House No. 1/12, Vivekanand Marg, North Sri Krishnapuri, Police Station- Sri Krishnapuri, District- Patna.

... .. Petitioner/Opposite Party

Versus

Shrijay Sinha Son of Abhishek Kumar living under guardianship of his mother Priyanka Sinha through his mother and guardian Priyanka Sinha Wife of Abhishek Kumar, Present residence of Mohalla- Professor's Colony, Post and Police Station- Rampur, District- Gaya.

... .. Respondent/Applicant

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Appearance :

For the Petitioner : Mr. Sunil Kumar Singh, Advocate

For the Respondent :

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 20-01-2020

The present application has been filed "*for setting aside the order dated 05.11.2019 passed by learned Principal Judge, Family Court, Gaya in Miscellaneous Case No. 127/2016 (Shrijay Sinha Vs Abishek Kumar) under Section 18 of the Hindu Adoptions and Maintenance Act, whereby and whereunder the learned Principal Judge, Family Court, Gaya has allowed amendment petition dated 05.11.2019 filed by the applicant and also disposed of the petition dated 05.11.2019 filed by the petitioner/opposite party on the point of maintainability of the aforesaid Miscellaneous Case No. 127 of 2016.*"

2. Learned counsel for the opposite party/petitioner submits that the learned Court below has erred in allowing the



amendment petition filed under Order VI Rule 17 of the Civil Procedure Code by which the reference to Section 18 of the Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as 'the Act') has been permitted to be amended as under Section 20 of the said Act. It is submitted that such amendment has been allowed only after filing of the written statement with the objection that under Section 18 of the said Act, there was no provision for grant of maintenance to the minor son of the opposite party/petitioner and hence the petition was not maintainable. It is further submitted that by allowing the amendment petition, the nature of the suit itself had changed to one where maintenance is now being sought for the opposite party/petitioner.

3. Having heard learned counsel for the opposite party/petitioner and on consideration of the materials on record, this Court is not inclined to interfere in the matter. A bare perusal of the application filed in Miscellaneous Case No. 127 of 2016 (Annexure-1) discloses that it was the minor son of the opposite party/petitioner who had filed the application through his mother, claiming maintenance. The inadvertent error in referring to Section 18 of the Act was therefore sought to be amended with the correct provision namely Section 20 which was allowed. The learned Court below has rightly observed that mere misquoting of the provision of the Act would not stand in the way of the amendment petition being allowed. Such amendment does not change the nature of the suit.



As a matter of fact, even the relief has not been amended as the application itself had been filed claiming maintenance of the minor son of the opposite party/petitioner. No jurisdictional error or other illegality or infirmity has been pointed out by learned counsel for the opposite party/petitioner. The petition stands dismissed.

(Vikash Jain, J)

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