

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 643 of 2000****Reserved on 22-1-2020****Judgment delivered on 27-1-2020**

1. Smt. Kanchan Mala W/o. Santosh Kumar Jaiswal, R/o. Kaweri Bihar Block No. Quarter No. 888, PS Darri, Distt. Bilaspur MP
2. Prinka S/o. Santosh Kumar Jaiswal, aged 27 years.
3. Praveen S/o. Santosh Kumar Jaiswal, aged 25 years

All residents of Kaweri Bihar, Block No. 1, Gr. No. 888, Darri, PS Darri, Distt. Bilaspur

---- Appellants**Versus**

Santosh Kumar Jaiswal S/o. Ramnath Jaiswal, R/o. C/o. Samarjeet Singh, General Manager, Kahalgaon, Super Thermal Power, Project, Dipti Nagar, Post Office Kahalgaon, Distt. Bhagalpur, Bihar.

---- Respondent

For appellants : Mr. Rishi Mahobia, Advocate on behalf of Mr. A.K. Prasad, Adv.

For Respondent : None, though served.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Appellant has preferred this Civil Appeal against the judgment and decree dated 25-7-2000 passed in Civil Suit No. 74-A/2000 by 5th Additional District Judge, Bilaspur (MP now in CG) whereby and whereunder he dismissed the claim of appellant No. 1 regarding allowance for the maintenance and ordered that respondent shall pay appellant No. 2 and 3 Rs. 500/- each per month as allowance for maintenance.

2. This is admitted by respondent that his marriage was solemnized with appellant No. 1 on 24-4-1974 in accordance with Hindu rites and rituals, in their wedlock appellants No.2 and 3 have born who were residing with appellant No. 1, both the parties are Hindu, appellant No. 1 had filed an application under Section 10 of Hindu Marriage Act, 1955 against the respondent. It was registered as Civil Suit No. 36 -A/1996, decided on 18-3-1997 by 7th Addl. Distt. Judge, Bilaspur, it was decreed and respondent was

ordered that he shall pay Rs. 2500/- as allowance for maintenance to appellant No. 1 since 21-3-1997. He was working as Assistant Chemist at Kahalgaon, Distt. Bhagalpur, Bihar in NTPC, he was getting Rs. 6,000/- per month as salary.

3. In brief the appellants' case is that the aforesaid Rs. 2500/- per month allowance for maintenance was insufficient. He was getting Rs. 14,000/- per month. He had some immovable property also. Appellant No. 2 and 3 were studying in English medium school. Hence, respondent may be ordered to give them at the rate of Rs. 10,000/- per month as allowance for maintenance.

4. In brief the respondent's case is that aforesaid amount Rs. 2500/- per month was sufficient for appellants. His parents, elder brother and widow sister were living with him. Hence, the appellants' application may be rejected.

5. Trial Court by aforesaid judgment and decree partly allowed the appellants' claim. Being aggrieved the appellants have preferred this civil appeal.

6. Counsel for the appellants argued that there is sufficient evidence available on record which indicates that respondent was earning Rs. 14,000/- per month. Trial Court wrongly rejected the claim of appellant No. 1 and granted allowance for maintenance to appellants No. 2 and 3 on lower side.

7. **Points for determination :-**

There are following points for determination in the case in hand-

(1) Whether the appellants are entitled to get @ 10,000/- per month allowance for maintenance from respondent ?

(2) Relief and costs.

Point for determination No. 1- Finding with reasons:-

8. A.W. 1 Mst. Kanchanmala says in para 8 that appellant No. 2 Priyanka was studying in class 7th and appellant No. 3 Praveen Kumar was studying in class 6th in Central School, which is an English medium school. For one child, the expense for fees, tempo, dress, shoes, etc. was Rs. 1,000/- per month.

9. There is no such evidence on record on strength of which it can be said that aforesaid statement of AW 1 Mst. Kanchanmala is not believable. Moreover, NAW 1 Santosh Kumar says in para 10 that appellants No. 2 and 3 were studying in Central School. In these circumstances, this Court believes on aforesaid statement of para 8 of AW 1 Mst. Kanchanmala.

10. AW 1 Mst. Kanchanmala says in para 9 that she had to spent Rs. 8000 to 9,000/- towards house rent, electricity bill, medicine expenses, fruit expenses, cloth expenses, etc.

11. There is no such evidence on record on strength of which it can be said that aforesaid statement of AW 1 Kanchanmala is not believable to the extent that she was spending Rs. 3,000/- per month on account of aforesaid expenses.

12. N.A.W. 1 Santosh Kumar says in para 4 that after deduction he was getting Rs. 6500/- per month.

13. As per Ex. P-1, the gross salary of appellant was Rs. 11,714/- per month.

14. Looking to the above mentioned facts and circumstances of the case, looking to the price index, price of cereals, looking to the house rent, electricity bill, water bill, cloth expenses, etc., this Court finds that appellant No. 1 was spending Rs. 3,000/- per month additionally.

15. Looking to the above mentioned facts and circumstances of the case, this Court finds that appellant No. 1 is entitled to get at the rate of Rs. 3,000/- per month allowance for maintenance from respondent (the amount Rs. 2500/- per month would be adjusted in this amount). Appellants No. 2 and 3 are entitled to get at the rate of Rs. 1,000/- per month each as allowance for maintenance from respondent.

16. Looking to the facts and circumstances of the case, this Court finds that appellants are entitled to get the allowance for maintenance from the date of filing of the application i.e. 11-9-1997.

17. The appeal is partly allowed. The judgment and decree of trial Court regarding rejection of the maintenance claim of appellant No. 1 is set aside and it is modified regarding appellant No. 2 and 3.

18. The respondent is ordered that he shall pay at the rate of Rs. 3,000/-

(Rs. Three thousand only) per month as allowance for maintenance to appellant No.1 Smt. Kanchanmala from date of filing of the application i.e. 11-9-1997 (the awarded amount for maintenance Rs. 2500/- (Rs. Two thousand and five hundred only) shall be adjusted in this amount).

The respondent is ordered that he shall pay at the rate of Rs. 1,000/- (Rs. One thousand only) per month to appellant No. 2 Priyanka through her guardian mother, appellant No. 1 Smt. Kanchanmala till she attains majority and after attaining the majority, the amount will be paid to her till her marriage from 11-9-1997.

The respondent is ordered that he shall pay at the rate of Rs. 1,000/- (Rs. One thousand only) per month to appellant No. 3 Praveen Kumar through his guardian mother, appellant No. 1 Smt. Kanchanmala till he attains majority.

19. Respondent shall bear his costs as well cost of the appellants.

20. The decree be drawn accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge