AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 229 of 2019

Smt. Krishna Bai, Wd/o. Late Dharmraj, Aged About 70 Years, R/o Road No. 16, Q. No. 2-A, Sector-8, Bhilai, Tahsil and District Durg, Chhattisgarh

---- Appellant

Versus

Mrs. Priya Thakre, Wd/o. Rupawalkant, Aged About 40 Years, R/o Road No. 65, Q. No. 4- B, Sector-6, Bhilai, Tahsil and District - Durg, Chhattisgarh, Office Address- Chief Executive Officer, Bhilai Steel Plant, District- Durg, Chhattisgarh

---- Respondent

For the Appellant	:-	Mr. Kashyap Kumar Mishra, Advocate
For the Respondent	:-	Mr. Siddharth Rathod, Advocate

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Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By

Manindra Mohan Shrivastava, J.

24.02.2020

Heard.

1. This appeal arises out of order dated 26.09.2018 passed by the Family Court, by which, the appellant's application under Section 22 of the Hindu Adoption and Maintenance Act against the respondent daughter-in-law has been rejected.

2. An application for grant of maintenance under Section 22 of the Hindu Adoption and Maintenance Act was filed by the appellant before the Family Court on the pleadings that after death of appellant's husband, her son Rupwalkant Thakre was granted compassionate appointment. He also died in the year 2012 and thereafter, compassionate appointment was granted to his widow Priya Thakre, who happens to be the appellant's daughter-in-law.

3. While accepting compassionate appointment, respondent had undertaken before the employer authorities that she would be paying appropriate amount of money as agreed to between her and the appellant.

4. Case of the appellant was that the appellant being lonely destitute widow, is entitled to receive maintenance as dependent from respondent daughter-in-law, who is in employment under scheme of compassionate appointment, upon death of her husband.

5. That application was opposed by the respondent daughter-in-law by submitting that as none of the estate of the deceased husband of the appellant devolved upon her, nor has she derived income therefrom, she is not statutorily obliged under Section 22 of the Hindu Adoption and Maintenance Act to maintain the mother-in-law. It was also stated that appellant has two sons namely, Yadusudan and Tarun Kumar, both are in employment and are getting Rs. 40,000/- and Rs. 50,000/-respectively as monthly salary and instead of seeking maintenance from her own

sons, she has preferred application for grant of maintenance from her daughter-in-law.

6. Learned Family Court, recording a finding that application under Section 22 of the Hindu Adoption and Maintenance Act was not maintainable as it could not be proved that the appellant was entitled to receive her share out of any estate of her deceased husband, received by respondent daughter-in-law, the application was rejected.

7. Assailing correctness and validity of aforesaid order, learned counsel for the appellant would argue that respondent daughter-in-law got compassionate appointment upon death of her husband Rupwalkant, the son of the appellant. He would argue that Rupwalkant was granted compassionate appointment after death of his father Dharamraj, who was the husband of the appellant. In this manner, respondent daughter-in-law received compassionate appointment which traces back to appellant's husband Dharamraj. Next submission is that earnings derived from compassionate appointment are estate within the meaning of that word as contained in section 22 of the Hindu Adoption and Maintenance Act 1956. He would also submit that the scheme of legislation being beneficent one, the word 'estate' requires to be interpreted in liberal manner so as to include every benefit which is received as flowing from the estate of the deceased including grant of compassionate appointment, which was granted to husband of the respondent as the son of deceased father Dharamraj.

8. Learned counsel for the respondent, opposing prayer, submits that the benefits derived under compassionate appointment are not assets of deceased Dharamraj. He would submit that word 'estate' occurring in section 22 has to be understood in its normal, grammatical meaning and benefits derived from compassionate appointment could not be included as estate of the deceased.

9. We have learned counsel for the parties and perused the record and the impugned record.

10. The entire dispute revolves around as to whether the appellant is entitled to get maintenance from respondent daughter-in-law. She is entitled to get maintenance under Section 22 of the Hindu Adoption and Maintenance Act, it is therefore, relevant to examine statutory scheme of section 22 of the Act of 1956.

Section 22 is extracted herein below:-

> 1. Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.
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> 2. Where a dependent has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

3. The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

4. Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

11. The spirit of the aforesaid provision, as gathered from the language of the provision, is that the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased. The expression "estate inherited by them from the deceased" is therefore, required to be rationally construed and interpreted in the spirit of the provision of the Act. The Hindu Adoption and Maintenance Act 1956 does not define 'estate'. However, the context in which the word estate has been mentioned in section 22 would be relevant to find out true import and meaning of the expression as referred to herein above.

The object of section 22 of the Act 1956 is to give statutory recognition to the obligation imposed under Shastrik Hindu Laws on the person who inherits the estate of the deceased to maintain the dependents of the deceased. It is important to notice that the word "estate is suffixed by the word inherited". If both these words are read together, the legislative intention is clear that the estate is to be understood as one which is inherited from the deceased.

Grant of compassionate appointment to the dependents of the deceased is not an attribute of personal laws of Hindu. There is nothing is the Shastrik Hindu Laws which imposed any obligation to maintain dependents of the deceased from the income derived by one of the members of the family who is granted compassionate appointment.

12. In view of provision contained in section 22 of the Act, all that can be said is that the statutorily obligation to maintain dependents of the deceased was only from the source of fund derived from the estate of the deceased which was inherited by the person under obligation to maintain dependents.

13. Compassionate appointment is an attribute of public employment. It is a welfare scheme of State and other instrumentalities of the state in modern times that upon death of the employee, one of the dependents of the deceased is granted compassionate appointment, the object being to help the family and provide succor to it. The source of compassionate appointment is wholly unconnected with the obligation statutory or otherwise arising under personal laws. Therefore, where one of the member in the family gets compassionate appointment after death of the earning member, that he gets because of a scheme of public employment. Therefore, whatever earnings are made by way of salary or other benefits flowing from employment cannot be treated as “estate” inherited from the deceased, as mentioned

in section 22 of the Hindu Adoption and Maintenance Act. Consequently, any dependent would not be entitled to seek maintenance from the person on the basis that person was granted compassionate appointment after death of the deceased. Definitely, if the person alleged to be under the obligation to pay maintenance had inherited estate of the deceased, he would be liable to maintain the dependent out of that estate inherited by him. But certainly, not from the income derived from compassionate appointment. We find that learned Family Court has rejected the application as not maintainable relying upon the decision of the Coordinate Bench of this Court in FAM No. 177 of 2015 decided on 10.10.2017 in Bharat Lal Sharma and another vs. Smt. Mithlesh Sharma @ Priyanka Sharm.

14. In our considered opinion, learned Family Court has not committed any illegality in holding that the application of the appellant is not maintainable under Section 22 of the Hindu Adoption and Maintenance Act.

15. The appeal therefore, has no merit and dismissed. Parties to bear their respective costs.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge

Santosh