

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 250 of 2020

1. Amar Pal Singh Broka, S/o. Late Shri Mahendra Singh Broka, aged about 50 years,
 2. Sukhbir Singh Broka, S/o. Late Shri Mahendra Singh Broka, aged about 45 years,
 3. Ranjeet Singh Broka, S/o. Late Shri Mahendra Singh Broka, aged about 42 years,
 4. Titu Broka, S/o. Late Shri Mahendra Singh Broka, aged about 47 years
 5. Sardar Jasbir Singh Broka, S/o. Late Mahendra Singh Broka, aged about 55 years,
 6. Bunt Singh Broka, S/o. Late Mahendra Singh Broka, aged about 43 years,
- All are R/o Main Road, Near Pushpa Hospital, Dallirajhara, District Durg (Now District Balod) Chhattisgarh.

---- Petitioners

Versus

1. Ku. Amrit Kaur, D/o. Late Harmit Singh, aged about 10 years, R/o. New Shanti Nagar, Gorkha Colony, Police Station Civil Lines, Raipur Chhattisgarh. Minor Represented Through Mother Smt. Balbir Kaur, aged about 39 years, R/o. New Shanti Nagar, Gorkha Colony, Police Station Civil Lines, Raipur Chhattisgarh. At Present R/o. D/12, P.H.C.L. Dream Home, Near Apollo Hospital Smriti Nagar, Junwani Road, Bhilai, District Durg Chhattisgarh.
2. Ravdeep Singh Broka, S/o. Late Kuku Singh Broka, aged about 25 years, R/o. Main Road, Near Pushpa Hospital Dallirajhara, District Durg (Now District Balod) Chhattisgarh.

---- Respondents

For Petitioners	: Mr. B.P. Singh, Advocate
For Respondents	: Mr. Lukesh Kumar Mishra, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/09/2021

1. This petition has been brought being aggrieved by the order dated 14.01.2020, passed by the Second Additional Principal Judge, Family Court, Raipur in Case No.28 of 2017.
2. The facts in brief are these that respondent No.1 has filed an application under Section 22 of Hindu Adoption and Maintenance Act, 1956 (in short 'the Act, 1956') stating that respondent No.1 is the daughter of Harmit Singh Broka and Smt. Balbir Kaur, out their wedlock. Harmit Singh Broka has expired on 21.02.2015. Respondent No.1 is at present dependent on her maternal grand parents on that basis it was prayed that maintenance be ordered in favour of respondent No.1 from the estate of the deceased, which is in possession of the petitioners. The learned trial Court has by the impugned order granted interim maintenance of Rs.10,000/- per month.
3. It is submitted by the learned counsel for the petitioners that respondent No.1 is not dependent as per definition of Section 21 of the Act, 1956. The deceased Harmit Singh Broka had already got partition of his share from the property of his father and he was living separately and pursuing separate business, therefore, the petitioners have no responsibility to pay maintenance to the respondent No.1. Therefore, the application filed for grant of maintenance to the respondent No.1 is by itself not maintainable. The respondent No.1 has no prima-facie case in her favour, hence, the impugned order is not sustainable.
4. Counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that the impugned

order is appealable under Section 19 of the Family Court Act, therefore, the present petition under Article 227 of the Constitution of India is not maintainable. The learned trial Court has passed order placing reliance on the judgment of superior Courts. It is further submitted that stand of the petitioners that the property was partitioned and the deceased Harmit Singh Broka had received his share has to be proved by bringing evidence and it can not be accepted as a prima-facie fact. Relying on the judgment of Supreme Court in case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai***, reported in ***AIR 1999 SC 22***, it is submitted that wherever alternative remedy is available, the petition under Article 227 of the Constitution of India should not be entertained. Therefore, the present petition is not maintainable and the impugned order is sustainable.

5. In reply, it is submitted by the counsel for the petitioners that the impugned order is of interlocutory nature, therefore, it is not appealable, hence, the petition under Article 227 of the Constitution of India is maintainable.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. The objection raised regarding the maintainability of the present petition has to be decided firstly.
8. Section 18, 19, 20 and 22 of The Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the Act, 1956') are the provisions for grant of maintenance to the wife and other dependents. There is no specific provision present in the Act, 1956

for grant of interim maintenance. The trial Court has referred to the judgment of Full Bench of Andhra Pradesh High Court in the case of P. Srinivasa Rao Vs. P. Indira & Anr. reported in AIR 2002 AP 130, in which it has been held that in absence of the specific provisions, the Court can invoke inherent powers under Section 151 of C.P.C. to pass orders for interim maintenance.

9. There is no provision present in the Act, 1956 with respect to procedure of appeal or revision against the order which may be passed by a Court granting maintenance or interim maintenance to the dependent of the person. In the case of Minor Anu Vs. Ratan Lal Sharma reported in II (1994) DMC 338, the Division Bench of High Court of Rajasthan has held, that the order granting maintenance allowance is an interlocutory order within the meaning of Section 19(1) of the Family Courts Act, therefore, such an order is neither appealable nor any revision can be filed against it. The Full Bench of High Court of Orissa has in the case of Swarna Prava Tripathy And Anr. vs Dibyasingha Tripathy And Anr. reported in AIR 1998 Ori 173, held that appeal is a creature of the statute and it cannot be assumed when the statute does not provide for the same. Section 19 of Family Courts Act 1984, while prescribing any appeal against judgment and order has made an exception in not providing for right of appeal to the cases of interlocutory orders.
10. This being the view and the position in law at present that the order for interim maintenance which may either be passed under Section 24 of Hindu Marriage Act or under Section 18 to 22 of the Hindu Adoption and Maintenance Act, 1956, are interlocutory orders by

nature. Therefore, they are not appealable, hence, in such a case such order can be challenged under Article 227 Constitution of India. Hence, on the basis of this finding, the objection raised by the respondent side is over-ruled.

11. Considered on the submissions with respect to the order of maintenance. The petitioners have challenged the order on the ground that the petitioners have no liability, this averment is again based on this assertion made by them that the deceased father of the respondent No.1 has received his share in partition, therefore, the petitioners are not in possession of the joint estate in which the deceased father of the respondent No.1 had share. This is an issue raised which cannot be decided without bringing evidence. Apart from that it is not disputed that the respondent No.1 is daughter of the deceased Harmit Singh Broka, who happens to be the brother of all the petitioners and that he has also inherited a share in the property of his father regarding which the petitioners are claiming that the same has been partitioned. Therefore, the prima facie case is present in this case on the basis of which, the impugned order for maintenance was passed in favour of respondent No.1, which needs no interference. Therefore, this petition is dismissed and disposed off.
12. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge