

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 24-3-2021Judgment delivered on 26-3-2021**FAM No. 181 of 2019**

(Arising out of judgment and decree dated 15.5.2019 passed by the Judge, Family Court, Manendragarh, District Koriya in Civil Suit No.9-A/2019)

- Rahul Tiwari S/o Shri Jagdish Tiwari Aged About 26 Years R/o Subhash Nagar, Sainy Colony, Ranjhi, Jabalpur, Police Station Tahsil And District Jabalpur Madhya Pradesh.

---- Appellant**Versus**

- Smt. Vandana Tiwari W/o Shri Rahul Tiwari Aged About 21 Years R/o Chanwaridand, Manendragarh, District Koriya Chhattisgarh.

---- Respondent

For Appellant
For Respondent

Mr. Ramsevak Soni, Advocate
Mr. Amit Kumar Soni, Advocate

Hon'ble Mr. Justice Prashant Kumar Mishra
Hon'ble Mr. Justice N.K. Chandravanshi

CAV Judgment

The following judgment of the Court is delivered by **Prashant Kumar Mishra, J.**

1. Appellant (husband) is aggrieved by the order passed by the Family Court, Manendragarh allowing respondent/wife's application under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for brevity 'the HAMA') directing the appellant/husband to pay an amount of ₹3,000/- per month from May, 2019 towards maintenance of his wife.
2. Parties to the proceedings were married according to Hindu rites and

rituals on 26.11.2015. On account of marital dispute between the parties their marriage was dissolved by judgment and decree dated 6.3.2019 passed in Civil suit No.45-A/2018.

3. In the present application filed on 14.1.2019, when the marriage was subsisting, wife/respondent pleaded that her husband/appellant is earning handsome income from his taxi business and she has no means to earn her livelihood, therefore, she should be allowed monthly maintenance of ₹10,000/-. The appellant pleaded that he is a driver and earns ₹3000-4000/- per month. Based on evidence available on record, the trial Court has partly allowed the application directing the appellant/husband to pay ₹3,000/- per month from May, 2019 towards maintenance of his wife.
4. Apart from raising argument on merits and the quantum of maintenance, the main argument advanced by learned counsel for the appellant is to the effect that the divorced wife cannot claim maintenance under Section 18 of the HAMA.
5. We have heard learned counsel for the parties at length and perused the record. For considering the issue at hand, it would be apt to refer to Section 18 of the HAMA. The same is reproduced herein for ready reference:-

“18. **Maintenance of wife.**-(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-

- (a) if he guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
- (c) if he is suffering from a virulent form of leprosy;
- (d) if he any other wife living;
- (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- (f) if he has ceased to be a Hindu by conversion to another religion;
- (g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.”

6. The above quoted provision contained in the Section 18 of the HAMA provides that a Hindu wife, whether married before or after the commencement of the HAMA, shall be entitled to be maintained by her husband during her lifetime. Sub-section (2) provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance, if she satisfies the contingencies mentioned under clause (a) to (g) of Sub-section (2). Likewise Sub-section (3) provides for the condition when a Hindu wife shall not be entitled to separate residence, it says, a Hindu wife shall not be entitled for separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another

religion.

7. A close reading of the entire Section 18 of the HAMA would thus manifest that when the husband is guilty of committing any lapses provided under clause (a) to (g) of Sub-section (2), the Hindu wife shall be entitled to live separately and claim maintenance. This living separate yet claiming maintenance from the husband would arise when the marriage between them is subsisting, however, when the marriage is dissolved, a divorced wife is entitled to claim permanent alimony and maintenance under Section 25 and claim Stridhan under Section 27 of the Hindu Marriage Act, 1955. Likewise, a divorced wife can also claim maintenance under Section 125 Cr.P.C. in view of Explanation (b) to Sub-section (1) of Section 125 Cr.P.C. which says that “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
8. Learned counsel for the respondent has referred to the judgment rendered by the Supreme Court in the matter of **Rohtash Singh Vs. Ramendri (Smt) And Others** reported in (2000) 3 SCC 180 and in the matter of **Vanamala (Smt) Vs. H.M. Ranganatha Bhatia** reported in (1995) 5 SCC 299 to argue that even a divorced wife can claim maintenance from her husband.
9. The above judgments of **Rohtash Singh** and **Vanamala (Smt)** (Supra), were considering claim for maintenance under Section 125 Cr.P.C. preferred by a divorced wife. In the said matters there were no proceedings under the HAMA. Since Explanation (b) to Sub-section (1) of Section 125 Cr.P.C. provides that “wife” includes a woman who has been divorced by, or has obtained a divorce from, her

husband and has not remarried, this Court has to agree with the proposition that under Section 125 Cr.P.C. a divorced wife can claim maintenance, however, the provisions contained in Section 18 of the HAMA are differently worded and the same has been considered by the Hon'ble Supreme Court in the matter of **Chand Dhawan (Smt) Vs. Jawaharlal Dhawan** reported in (1993) 3 SCC 406. In the said matter, the Hon'ble Supreme Court has observed thus in paragraphs 25 and 26 :-

“25. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under section 18 (1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the

subject of maintenance.

(emphasis supplied)

26. Relief to the wife may also be due under Section 125 of the Code of Criminal Procedure whereunder an order of maintenance can be granted after contest, and an order of interim maintenance can be made at the outset, without much contest. This provision however has two peculiar features--

(i) the provision applies to all and not only to Hindus; and

(ii) maintenance allowance cannot exceed a sum of Rs. 500 per mensem.

But this is a measure in the alternative to provide for destitute wives.”

10. Having said so, the Supreme Court further observed in paragraph 28 that when distinctive claims are covered distinctly under two different statutes and agitable in the Courts conceived of thereunder, it is difficult to sustain the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities. These are matters which go to the root of the jurisdiction. The matrimonial Court, a Court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties.

11. In view of the law laid down by the Supreme Court in the matter of **Chand Dhawan (Smt)** (Supra), the respondent/ wife's claim under

Section 18 of the HAMA does not survive after passing of decree of divorce between the parties on 6.3.2019 passed in Civil suit No.45-A/2018. Therefore, the impugned decree having been passed on 15.5.2019, i.e., after dissolution of their marriage, is not sustainable.

12. Accordingly, the impugned judgment and decree is set-aside.

However, the respondent/wife would be at liberty to agitate her claim under any other provision of law under which she is entitled to claim maintenance.

13. As a sequel, the appeal is allowed to the extent indicated above, leaving the parties to bear their own cost(s).

14. A decree be drawn accordingly.

SD/-

(Prashant Kumar Mishra)
Judge

SD/-

(N.K. Chandravanshi)
Judge

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Headnote

A divorced Hindu wife cannot claim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956.