

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

FAMILY COURT APPEAL No.102 of 2007

JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

This Family Court Appeal, under Section 19 of the Family Courts Act, 1984, is filed by the appellants, challenging the order dated 27.01.2007 passed in I.A.No.1055 of 2006 in O.P.No.1007 of 2005 by the learned Judge, Family Court, at Hyderabad, wherein the subject Interlocutory Application filed by the respondent under Order VII Rule 11 CPC r/w Section 151 CPC seeking to reject the O.P.No.1007 of 2005 (filed by the appellants claiming maintenance of Rs.10,000/- per month) for want of jurisdiction, was allowed by the Court below.

2. Heard the learned counsel for the appellants, the learned counsel for the respondent and perused the record.

3. As seen from the material placed on record, in the cause title of the appeal, it is mentioned that the appellants herein (petitioners in O.P.No.1007 of 2005), are all residing at Door No.84, Madhura Nagar, Hyderabad. In the pleadings, it has come up that appellants (petitioners in O.P.No.1007 of 2005)

have settled in Hyderabad. The Court below arrived at a conclusion that the appellants were not residing at Hyderabad and as such, it had no territorial jurisdiction to entertain the subject O.P. It is pertinent to state that the appellants herein in Para 7 of the counter affidavit filed in I.A.No.1055 of 2006 in O.P.No.1007 of 2005, clearly narrated certain aspects in relation to jurisdiction of the Court below. Para 7 of the counter affidavit, reads as follows:

"It is further submitted that the Hindu Adoptions and Maintenance Act, is silent as to the place of instituting proceedings. There cannot be any dispute about the fact that the Family Court, Hyderabad has territorial Jurisdiction over Madhuranagar, where we are residing. By virtue of Sec. 7 of the Family Courts Act, 1984, this Hon'ble Court has jurisdiction to try the case. It is respectfully submitted that recognizing the need for providing woman a forum of suing at the place of the residence, all the laws relating to marriage and divorce have been suitably amended. Even S.125 of Cr.P.C gives right to wife to sue for maintenance at the place of her residence. Law provides for maintenance to wife, if she is justified in living separately in which case, the very fact that she is living at a place gives rise to cause of action at that place. Hence even U/s 20 of CPC, this Hon'ble Court is having territorial jurisdiction to try this case.

It may be noted that in view of the circumstances put-forth by both sides, whether the Family Court, Hyderabad, has got territorial jurisdiction over Madhuranagar, where the appellants are said to be residing, is a question of fact, which needs examination and determination after due enquiry as contemplated under law. Without there being such enquiry, it is

not appropriate for the Court below to arrive at a conclusion that it has no jurisdiction to entertain the subject O.P.No.1007 of 2005. Under these circumstances, the impugned order dated 27.01.2007 passed in I.A.No.1055 of 2006 in O.P.No.1007 of 2005 by the Court below, is unsustainable and liable to be set aside.

4. Accordingly, this Family Court Appeal is allowed and the impugned order dated 27.01.2007 passed in I.A.No.1055 of 2006 in O.P.No.1007 of 2005 by the learned Judge, Family Court, at Hyderabad, is set aside. Consequently, O.P.No.1007 of 2005 is restored to the file of the Court below, for disposal, in accordance with law. Since the subject O.P is of the year 2005, the Court below is directed to dispose of the same within a period of three (03) months from the date of receipt of a copy of this order.

Miscellaneous petitions, pending if any, in this appeal, shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

Date: 07.06.2022
SCS