

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

FAMILY COURT APPEAL No.248 of 2008

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 appellant/wife, challenging the order dated 22.08.2008 passed in I.A.No.908 of 2007 in O.P.No.474 of 2007 by the learned Judge, Family Court, at Hyderabad, wherein the subject Interlocutory Application filed by the appellant/wife against the respondent/husband under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance of Rs.10,000/- per month for herself and her children, was dismissed.

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

3. As seen from the material placed on record, the appellant herein filed I.A.No.908 of 2007 in O.P.No.474 of 2007 before the learned Judge, Family Court, at Hyderabad, against the respondent, under Section 24 of Hindu Marriage Act, 1955, seeking interim maintenance of Rs.10,000/- for herself and her

two children. The Court below vide impugned order dated 22.08.2008 dismissed the said application on the observation that earlier O.P.No.1007 of 2005 filed by the appellant herein was dismissed for want of jurisdiction and the matter was subjudice before the Hon'ble High Court in FCA No.102 of 2007.

4. Today, this Court vide judgment dated 07.06.2022 passed in F.C.A.No.102 of 2007 allowed the said appeal by setting aside 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 and the O.P.No.1007 of 2005 was restored to the file of the Court below, for disposal, in accordance with law.

5. In the course of submissions, it is brought to the notice of this Court that Section 24 of the Hindu Marriage Act, 1955, enables the wife and children to file an application and seek interim maintenance in a pending divorce application. Section 24 of the Hindu Marriage Act, reads as follows:

“24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

It may be noted that for grant of interim maintenance in a pending divorce application i.e, in O.P.No.474 of 2007, the Court has to find out whether there are merits to allow the application for maintenance or not, but not whether the Court has jurisdiction to deal with O.P.No.474 of 2007. Under these circumstances, the impugned order dated 22.08.2008 passed in I.A.No.908 of 2007 in O.P.No.474 of 2007 is not in consonance with law.

6. Accordingly, this Family Court Appeal is allowed and the impugned order dated 22.08.2008 passed in I.A.No.908 of 2007 in O.P.No.474 of 2007 by the learned Judge, Family Court, at Hyderabad, is set aside and the I.A.No.908 of 2007 is restored to the file of the Court below, for disposal afresh, in accordance with law. The Court below is directed to dispose of said I.A.No.908 of 2007 within a period of thirty (30) days from the date of receipt of a copy of this order.

7. It is brought to the notice of this Court that the O.P.No.474 of 2007 is an old matter pertaining to the year 2007

and it needs expeditious disposal. Under these circumstances, the Court below shall also dispose of O.P.No.474 of 2007 expeditiously, preferably 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