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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 28th April, 2022*

+ **MAT.APP.(F.C.) 217/2019**

LAXMI & ANRAppellants

Represented by: Mr. Saurabh Kumar Tuteja & Mr.
Arpan Rathore, Advocates.

versus

SHYAM PRATAP & ANR Respondents

Represented by: Ms. Satwinder Kaur, Advocate for
R-2 with respondent No. 2 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

NEENA BANSAL KRISHNA, J. (ORAL)

CM APPL. 36737/2019 (Delay of 44 days in filing appeal)

1. By this application, the appellant seeks condonation of 44 days' delay in filing the appeal.
2. For the reasons stated in the application, delay of 44 days in filing the appeal is condoned.
3. Application is disposed of.

MAT.APP.(F.C.) 217/2019

1. The appellants, who are the widowed daughter-in-law and grand-daughter of the respondents, have filed the petition under Section 19 of the Family Court Act, 1984 against the order dated 3rd May, 2019 deferring their claim for interim maintenance in a petition under Section 19



of the Hindu Adoption and Maintenance Act, 1956 (*hereinafter referred to as The Act, 1956*).

2. The facts in brief are that appellant no.1 Smt. Laxmi got married to Sh. Prakash son of the respondents on 3rd December, 2011 according to Hindu Customs and Rites and one daughter appellant No.2 was born from their wed lock on 1st October, 2012. Unfortunately, Sh. Prakash expired on 14th December, 2013 and since the next day, appellant No.1 along with her daughter shifted to her parental home. According to the respondents, she neither returned nor did she remain in contact with the respondents, but filed a petition for maintenance after four years i.e on 23rd February, 2018.

3. The appellant in her application for interim maintenance had asserted that she was not well educated and had no source of income to maintain herself or the daughter. She is totally dependent upon her old age ailing parents for her day to day needs. The respondent No.1/ father-in-law is an educated person employed in MTNL department and is duty bound to take care of the daughter-in-law and the grand-daughter. However, the respondents have intentionally and deliberately neglected them by not paying even a penny towards their maintenance. It was claimed that not only is respondent No.1 getting his regular salary but is also earning about ₹20,000/- per month from rent and his total monthly earnings are about ₹55000/- to ₹65000/-. Accordingly, she claimed interim maintenance in the sum of ₹30,000/- per month till the disposal of the main petition.

4. The respondents on the other hand, had asserted that the appellants are not entitled to any maintenance under Section 19 of the Act since there was no estate left behind by the deceased. The respondent No.1 neither has any coparcenary property nor any income there from and the petitioners are not



entitled to maintenance under the Act. It was claimed that as per the knowledge of the respondents, appellant No.1 was doing a private job in a factory in Gandhi Nagar and earning about ₹9,000/- to ₹10,000/- per month. She also has a share in her ancestral property in a village.

5. Ld. Principal Judge, Family Court in the impugned order, observed that the appellant had failed to disclose about any estate left behind by her husband with the respondents from which the appellants could claim maintenance. The application was accordingly dismissed. Aggrieved, the present appeal has been filed.

6. The main ground of challenge is that the widowed daughter-in-law and grand-daughter are entitled to claim maintenance from the father-in-law even if the property is self acquired by the parents-in-law/ grand-parents. It is claimed that the facts have not been appreciated in the right perspective and the maintenance has been wrongly denied to the appellants.

7. Learned counsel on behalf of the appellants stated that the appellant No.1 has undergone surgery and is not capable of working and taking care of herself. She was being supported and maintained by her parents who have some rental income from some part of the residential house which has been given on rent. However, her father has expired and her mother is an illiterate woman who has no source of income. She also has younger sisters and a younger brother who are all being maintained by the mother from the income being generated solely from the rent. It was vehemently argued that being the daughter-in-law and the grand-daughter, the appellants are entitled to maintenance from the respondents.

8. During the course of arguments it was mentioned that respondent No.1 has expired about more than a year back. The respondent No.2, who is



the mother-in-law, has a married daughter who is staying with her on account of her matrimonial discord. Sh. Prakash, the deceased son was a widower at the time of his marriage with petitioner No.1 and had a daughter from the first marriage who also is living with respondent No.2 and is being maintained by her. It was submitted that the respondents have some rental income from the part of their house which has been rented out, but the rental income is not sufficient for the respondents to meet the requirements of herself as well as of dependent members. It was further stated that Sh. Prakash was an e-rickshaw driver and had no estate whatsoever which was inherited by the respondents. There is no property of Sh. Prakash which devolved upon the respondents from which the appellants can claim a right to be maintained.

9. Submissions heard.

10. The petitioners have claimed maintenance under the Act 1956. Section 19 of the Act provides for maintenance to a widowed daughter-in-law. It reads as under:

19. Maintenance of widowed daughter-in-law.—

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.



11. The daughter-in-law can claim maintenance from her father-in-law provided he has inherited some estate of her husband. The appellant has failed to disclose any estate of her husband having devolved upon the respondents. Not only this, the respondent No.1 father-in-law has already expired. Now only respondent No.2 mother-in-law survives and the appellants cannot as a matter of right, claim any maintenance from her.

12. Section 22 of the Act provides for maintenance of dependents of the deceased by the heirs of the deceased, but this is subject to the condition that they having inherited the estate from the deceased.

13. As already noted above, no estate has been inherited either by the mother or the sister of the deceased husband of the appellant No.1 from which any maintenance can be claimed by the appellants. There is no infirmity in the impugned order of the learned Family Judge. The appeal is hereby dismissed.

14. Order be uploaded on the website of this court.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 28, 2022

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