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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12632 OF 2022

Sharada Kailas Ingale

... Petitioner

V/s.

Anjali Kailash Ingale

... Respondent

Ms. Kanishk Waghware for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 19, 2023

P.C.:

1. The petitioner is the stepmother of the respondent represented by her next friend. The respondent represented by her next friend filed petition under the provisions of the Hindu Adoptions and Maintenance Act, 1956. In the said petition, respondent filed application for interim maintenance. The Family Court, Nashik by the impugned order dated 8th March 2022 directed the petitioner to pay interim maintenance of Rs.10,000/- to the petitioner. Aggrieved thereby, the petitioner has filed present writ petition.

2. Learned advocate for the petitioner raised two contentions: (i) under the provisions of the Hindu Adoptions and Maintenance Act, 1956, special child has no rights to seek maintenance; and (ii) considering income of the petitioner of Rs.24,000/-, interim maintenance of Rs.10,000/- is unreasonable.

3. Learned Family Court in the impugned order recorded a finding that the respondent/original petitioner is residing

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separately from the petitioner. She has no source of income. She is unable to maintain herself as she is of unsound mind. The amount of Rs.24,000/- has been held to be sufficient source of income. Therefore, taking into consideration the rising prices of essential commodities and medical aid and requirements of the respondent, the Court directed petitioner to pay amount of Rs.10,000/-.

4. Section 21 of the Hindu Adoptions and Maintenance Act, 1956 cast liability on the heirs of the deceased to maintain dependents if such heirs inherit estate of the deceased. Undisputedly, the petitioner has received estate of the deceased. Considering purpose of introduction of section 21, in my opinion, clause (v) of section 21 cannot be given restricted or literal meaning. Purpose of enacting section 21 is to provide relief to the dependents to maintain themselves from the person who received estate of the deceased. Right to receive maintenance has been granted based on property received by the heir of the deceased. To exclude special child from the expression “unmarried daughter” would be interpreting the provisions of law which would defeat object and purpose of the Act.

5. It is also not in dispute that the respondent is unmarried daughter. Such unmarried daughter being special child would not extinguish her right to claim maintenance under section 22 of the Hindu Adoptions and Maintenance Act, 1956 as other ingredients of section 22 and 21 are fulfilled. Therefore, in my opinion, the respondent being special child and unmarried daughter, she would be entitled to claim maintenance from the petitioner.

6. In so far as the quantum of amount of maintenance at Rs.10,000/- is concerned, according to the petitioner her income is Rs.24,000/- per month and, therefore, an amount of Rs.10,000/- per month is unreasonable.

7. Having considered the nature of the right claimed by the respondent and the right based on devolution of estate of the deceased, while deciding application for interim maintenance, the Family Court was justified in directing amount of Rs.10,000/- to be paid to the respondent herein.

8. In so far as the judgment of the Apex Court in **Rajnish v. Neha** reported in (2021) 2 SCC 324 is concerned, the Apex Court had no occasion to consider the rights of a special child. When the respondent is undisputedly a child of unsound mind, her liability to file such affidavit of estate and liability would not arise. As the respondent being child of unsound mind, she can neither enter into contract nor can earn income. Therefore, there is no question of such child filing affidavit of estate and liability as contemplated by the judgment in **Rajnish** (supra).

9. Therefore, in my opinion, there is no miscarriage of justice by directing the petitioner to pay an amount of Rs.10,000/- per month to the respondent.

10. There is no merit in this writ petition. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)