

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 1045/2023

Date of decision:15/02/2023

Rekha Rani and another

.....Petitioners.

Vs.

Naresh Kumar and another

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms.Poorva Gupta, Advocate for the petitioners.

Nidhi Gupta, J.

Present revision petition has been filed for setting aside the impugned order dated 22.11.2022 (Annexure P-5) passed by Ld. Additional District Judge, Yamuna Nagar whereby the order dated 21.12.2017 (Annexure P-3) passed by Ld. Civil Judge (Senior Division), Yamuna Nagar granting maintenance of Rs.10,000/- per month to petitioner no.2-minor Muskan, has been set aside.

Brief facts of the case are that the petitioner no.1 is daughter-in-law, and petitioner no.2 is minor granddaughter of the respondents herein. Petitioner no.2 is represented through her Natural

Guardian and her next friend, her mother-petitioner no.1. Deceased Vineet Kumar was son of respondent no.1 while respondent no.2 is his step mother. Petitioner no.1 is widow of deceased Vineet Kumar. He was murdered in the year 2013 while in judicial custody. It is case of the petitioners that after the death of Vineet Kumar, she was thrown out of her matrimonial home. She had no source of income and required at least Rs.25,000/- per month for basic amenities whereas the respondents have ancestral property in the shape of 10 acres of agricultural land, and respondent no.1 also purchased 4-1/2 acres of land in the name of respondent no.2 from a joint Hindu family property. Respondent no. 1 is further stated to have 40% share in Dharam Kanta.

It is submitted by the learned counsel for the petitioners that in view of the above facts, petitioner no.2 being minor granddaughter of the respondents was entitled to maintenance from the respondents under the provisions of Hindu Adoptions and Maintenance Act, 1956. It is accordingly prayed that the impugned order dated 22.11.2022 be set aside, whereby the order dated 21.12.2017 granting maintenance of Rs.10,000/- per month to petitioner no.2 has been set aside by the Ld. Additional District Judge. In support, learned counsel for the petitioners relies upon judgment of this Court in **Sunil Sachdeva v Rashmi and another bearing CRM-M-5732 of 2017, decided on 23.12.2022.**

No other argument has been raised.

Heard learned counsel for the petitioners.

I have gone through the well-reasoned and detailed impugned order passed by the Ld. Additional District Judge, Yamuna Nagar.

The following relevant paras are reproduced hereunder:-

“13. Assailing the impugned judgment dated 21.12.2017, learned counsel for appellant argued that the impugned judgment passed by the learned trial court is based on surmises and conjectures and is not sustainable in the eyes of law. Learned counsel for appellant argued that learned trial court has not applied its judicial mind while passing impugned judgment. It is further argued that appellant is not liable, to provide any maintenance to the petitioner No.2 because as per provisions of Section 22 of The Hindu Adoptions and Maintenance Act, 1956 (here- in-after referred to as The Act), a grand father is liable to maintain his grand child only if he has inherited estate from his deceased father. However, in the present case, no estate has been inherited by the appellant from his deceased Vinit. So, he is not liable to pay any maintenance to the respondent Muskan. It is further argued that respondent Rekha Rani mother of Muskan is earning sufficient money by way of tuitions and stitching and this fact has been admitted by her in her cross-examinations in the petition for custody of minor Muskan filed by appellant against her. It is further argued that Hon'ble High Court in similar petition has granted compensation of Rs.12 lakhs to respondent Rekha Rani and Muskan. In support of his contention, learned counsel for appellant has placed on record order dated 25.01.2018 passed in CWP No.19349 of 2015 titled Rekha Rani and another versus State of Haryana and others. It is further, contended that Rs.3,00,000/- which were given as compensation to appellant has also been deposited by him in the name of Muskan. It is further submitted that appellant is a pensioner and is receiving very meager amount from pension with which he is maintaining himself and aged wife. With these submissions, a prayer was made to dismiss the petition of the petitioners by accepting the present appeal.

*14. Per contra, learned counsel for the respondents-petitioners have argued that judgment passed by the learned trial court is well reasoned and speaking one. It is submitted that respondent Muskan is unable to maintain herself. Her mother is earning Rs.6000/- per month which is not sufficient to maintain herself and minor Muskan. It is further argued that it is the moral duty of a grand father to maintain his grand child if they are unable to maintain themselves. In this regard, learned counsel has placed judgment of case titled **Nachhattar Singh versus Satinder Kaur and others' 2008 (1) Latest Judicial Reports 609 (P&H)** With these submissions, he prayed for dismissal of the present appeal with heavy cost while upholding the judgment passed by the learned trial court.*

15. I have given thoughtful consideration to the arguments of the counsel for the appellants and learned counsel for respondent and perused the evidence brought on record thoroughly.

16. The question for consideration before this court is whether respondent Muskan (petitioner No.2 in main petition) daughter of deceased son of appellant Naresh Kumar (respondent No.1 in main petition) is entitled to maintenance from the appellant under the Act In this regard, Sections 21 and 22 of the Act are relevant which provides us under:-

*17. **Dependants defined.**__ For the purposes of this Chapter "dependants" mean the following relatives of the deceased:-*

- (i) his or her father;*
- (ii) his or her mother;*
- (iii) his widow, so long as she does not re-marry;*
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor provided and to the extent that he is unable to obtain maintenance. in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother*
- (v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;*
- (vi) his widowed daughter provided and to the extent that she is unable to obtain maintenance (a) from the estate of her husband. or (b) from her son or daughter if any, or his or her estate; or (c) from her father-in-law or his father or the estate of either of them; (vii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband 's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;*
- (viii) his or her minor illegitimate son, so long as he remains a minor;*
- (ix) his or her illegitimate daughter, so long as she remains unmarried.*

22. Maintenance of dependents. (1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the

commencement of this Act, the dependant shall be entitled subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section(3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

18. A bare perusal of the above sections reflects that a grand father is bound to maintain the daughter of his deceased son out of the estate inherited by him from the deceased. In the present case, neither there is any evidence on record nor there is any plea to the effect that appellant had inherited any estate from his deceased son, rather it has been contended by respondents (petitioners in main case) that deceased Vinit Kumar (father of minor Muskan) did not own any property

*19 Further, learned counsel for the respondents (petitioner in main case)relying upon the judgment of Hon'ble High Court of Punjab & Haryana in case titled '**Nachhattar Singh versus Satinder Kaur** and others (supra) has vehemently argued that a grand-father has a moral obligation to maintain grand children if they are unable to maintain themselves.*

20. The law laid down in the supra authority is not applicable to the facts of the present case as respondent No.1 (petitioner No.1 in original petition) in her cross-examination in another petition pending between the parties relating to custody of the minor child (Muskan) has admitted that her monthly income is around Rs.6000/- from the tuition etc.. Further, it has also come in the evidence that compensation of Rs.3,00,000/- received by appellant Naresh Kumar on account of death of deceased Vinit from the State Government has been deposited by him in the shape of FDR in the name of respondent Muskan. Further, during course of arguments, learned counsel for appellant has placed on record copy of order dated 25.01.2018 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.19349 of 2015 decided on 25.01.2018 titled "Rekha Rani and

another versus State of Haryana and others vide which respondent Rekha Rani and Muskan have been awarded Rs.12,00,000/- as compensation on account of death of Vinit.

21. Thus, in view of above, it can not be said that respondent Muskan does not have sufficient income to maintain herself”.

On a specific Court query, learned counsel for the petitioners is unable to controvert the above findings recorded in the impugned order. Learned counsel for the petitioners insists that it is incumbent upon the respondents to maintain their granddaughter, however, it is not disputed that the respondent no. 1 is a pensioner, whereas the petitioner no. 1 is earning. It is to be noted that nowhere in the revision petition filed by the petitioners has it been divulged that petitioner no.1 has received Rs.12 lacs as compensation; or that Rs.3 lacs received by respondent no.1 as compensation has been deposited in the name of petitioner no.2. The case law cited by the learned counsel for the petitioners is distinguishable as the facts and circumstances of the relied upon judgment are different from the facts in the present case.

In view of the above, finding no merit in this revision petition the same is hereby dismissed.

15/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No