



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

% **Reserved on: August 18, 2023**

Pronounced on: December 12, 2023

+ **MAT.APP.(F.C.) 61/2020 & CM APPL. 7221/2020; 7222/2020**

BHAGWAN DAS Appellant

Through: **Mr. Naresh Kumar & Ms. Shalini
Sengar, Advocates., Advocates**

Versus

SUNITARespondent

Through: **Mr. S.S. Rawal, Advocate**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. Present appeal has been filed by the appellant under the provisions of Section 19 of the Family Court Act, 1956 seeking setting aside of judgment and order dated 24.12.2019 passed in HMA No.06/2017 by the learned Family Court, whereby he has been directed to pay interim maintenance to the tune of Rs.3,000/- per month to the respondent, from the date of filing of the petition till 30.11.2019 and thereafter, to pay maintenance of Rs.5,000/- per month. In addition, appellant has also been directed to bear school and other educational expenses of the children of his deceased son and respondent (daughter-in-law) and pay water and electricity expenses in respect of the premises under occupation of the respondent.

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2. The appellant's son Sh.Satish Kumar got married to respondent as per Hindu Rites Customs and Ceremonies on 01.12.2012 and two children were born out of the said wedlock. The son of the appellant was employed in Delhi Home Guard when he expired on 15.07.2009. Pursuant to the death of appellant's son, respondent i.e. his daughter-in-law filed a petition under Section 19 of the Hindu Adoption and Maintenance Act, 1956 seeking a decree against the appellant to pay maintenance and also to pay a sum of Rs.2,00,000/- on account of her alleged unlawful and illegal dispossession from the property bearing No.B-139, Harijan Basti, Kondli, Delhi.

3. The respondent claimed before the learned Family Court that she had no source of income to maintain herself and her *istridhan* articles were in possession of the appellant and that he had refused to maintain her in any manner even though he has substantial resources. The respondent averred before the learned Family Court that appellant is a permanent employee of East Delhi Municipal Corporation (EDMC) on the post of Beldar/Chowkidar and is the owner of three following properties:-

- (i) Built up property bearing no.B-137, Harijan Basti, Kondli, Delhi-110096 of admeasuring 60 square yards.
- (ii) Built up property bearing no.B-139, Harijan Basti, Kondli, Delhi-110096 of admeasuring 400 square yards.
- (iii) Built up property bearing no.B-140, Harijan Basti, Kondli, Delhi-110096 of admeasuring 100 square yards.

4. The respondent alleged that after demise of her husband, the appellant and his family members shifted her temporarily from property B-139, Harijan Basti, Kondli to property B-140, Harijan Basti, Kondli on the pretext of construction, renovation and expansion on the assurance that she

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would be shifted back to the property B-139, Harijan Basti, Kondli where she originally lived with her husband and family. The respondent further claimed before the learned Family Court that the house where she was made to shift i.e. B-140, Harijan Basti, Kondli, was admeasuring 6" x 8" without any kitchen and permanent bathroom. She also pleaded that during lifetime of her husband, property B-139, Harijan Basti had three shops on the ground floor, however, pursuant to construction/renovation/expansion, the ground floor has been converted into two shops and the remaining area is used as a passage for the first floor and upper floors of the property, thereby she has been dispossessed from the shop which earlier existed in property B-139, Harijan Basti, Kondli in the possession of her late husband. The respondent stated that even during the pendency of the said petition, renovation work was on and has been deliberately lingered on to deprive her of possession thereof.

5. The respondent claimed before the learned Family Court that she had no source of income whereas appellant i.e. her father-in-law was in receipt of Rs.55,000/- approximately per month through hawkers and *pheriwalas* who stood in front of their property and besides rental of Rs.10,000 p.m. each from two rooms was also going to his pocket.

6. The stand of the appellant before the learned Family Court was that out of three properties, two were in the name of his wife and one was owned by him. He alleged that property No.B-140 where the respondent was shifted is 10" x 10" property and not 6" x 8" and also in the said property, his other son with his wife and children is living, who are also getting the same facilities as has been provided to the respondent and so, she cannot claim that she has been made to live in dilapidated condition.



7. The appellant denied that three shops were built and expanded in property B-139. He took the stand that the shops were in the same condition as were prior to the death of his son and also denied that he was in receipt of any rental income from any *hawkers or pheriwalas*.

8. The learned Family Court based on the pleadings of the parties framed the following issues:

“(i) *Whether the petitioner namely Sunita is entitled to get any maintenance from the respondent. If she is entitled to get any maintenance then how much amount she is entitled to get as maintenance u/s 19 of the Hindu Adoption and Maintenance Act?*

OPP

(ii) *Whether the petitioner is not entitled for any maintenance?*

OPD

(iii) *Relief.*

9. Learned Family Court on the first issue held that there was no allegation that respondent herein had received any property/money on demise of her husband or that she has any source of income to maintain herself or minor children.

10. Learned Family Court further observed that the relief sought by the respondent herein is confined to seeking maintenance from her father-in-law and thus, without going into the ownership aspect of three properties and while relying upon the provisions of Section 19 of the Hindu Adoption and Maintenance Act, 1956 held that respondent was entitled to maintenance from appellant for the purpose of computation of maintenance amount.

11. Learned Family Court considered the appellant's monthly income as Rs.25,000/- per month and noted that respondent was also getting widow



pension from Government of NCT of Delhi. However, learned Family Court observed that pursuant to order passed in petition under Section 12 of Protection of Women from Domestic Violence Act, 2005, the right of residence of respondent has already been protected and respondent was permitted to continue to stay in property No.B-140.

12. In the aforesaid facts of the case, learned Family Court directed as under:-

“(i) The respondent shall pay maintenance @ Rs.5000/- per month to the petitioner with effect from 01.12.2019.

(ii) The amounts payable to the petitioner towards interim maintenance under order dated 23.07.2013 is confirmed for the period till 30.11.2019. In other words, the respondent shall pay Rs.3000/- per month to the petitioner from the date of filing of this petition till 30.11.2019 and thereafter at the rate of Rs. 5000/- per month.

(iii) The respondent shall continue to pay school fees (which is presently stated to be exempted) and other education expenses of the children of petitioner which as per the own showing of respondent are being paid by the respondent.

(iv) The respondent shall continue to pay the water and electricity expenses for the premises under occupation of the petitioner which are admittedly being paid by the respondent.”

13. Aggrieved against the aforesaid judgment passed by learned Family Court, present appeal has been filed by the appellant/father-in-law on the ground that learned Family Court did not appreciate the pleadings and evidence brought on record. The appellant has pleaded that respondent is already getting widow pension from Delhi Government to the tune of



Rs.2,500/- per month, plus Rs.3,000/- per month as interim maintenance from the appellant herein and also the electricity, water, school expenses of children are borne by the appellant. It is further pleaded that the appellant is drawing pension of Rs.13,500/- per month only, however, the learned Family Court has taken his monthly income as Rs.25,000/- per month and therefore, the judgment passed by the learned court is unjust and contrary and consequently, deserves to be set aside.

14. The appellant has drawn the attention of this Court to the evidence of PW-1, Sunita; RW-1 Laxmi Devi; retirement circular from MCD (East) District and passbook showing credit amount on pension to pray that the maintenance awarded is exorbitant and hence, the impugned judgment deserves to be set aside.

15. When this appeal came up for hearing before this Court on 24.02.2020, subject to appellant continue to pay Rs.3,000/- as interim maintenance and pay the school fee of the children and also water and electricity bills in respect of premises under occupation of respondent, the notice of the appeal was issued to the respondent.

16. During the course of hearing and on the directions of this Court, the respondent has filed affidavit dated 16.08.2023 wherein she has averred that at the time of her marriage with the son of appellant, her husband was running a shop of gifts and sports items at the property bearing B-139 and she along with him and children was residing in the said property till December, 2010. The respondent has claimed that in September, 2007 her deceased husband joined basic training for home guards and she herself was running the said shop till December, 2010 i.e. even after demise of her



husband on 15.07.2009. The respondent claims to have been in possession of Domicile Certificate i.e. Domicile/88/882/5302/20/ 8/2009/ 8821001893/ 1327 Dated 31.12.2009 in respect of the said shop and also another license bearing No. 313/F.W. Cell (East), P.S. N. A. Ngr dated 27.10.2007 for selling fireworks from the said shop, to negate the claim of appellant that no shop was ever running from the property bearing No. B-139, Harijan Basti, Kondli, Delhi.

17. This Court has perused the impugned judgment, trial court record as well as other material placed on record and we find that the respondent had got herself examined as PW-1 before the learned Family Court and stated on oath that her father-in-law was permanent employee of MCD (East) and was drawing monthly salary of Rs.25,000/- approximately; he had three properties in his name as noted above; her deceased husband was running a shop from property bearing No. B-139; she was influenced to temporarily shift to property No. B-140 so that property B-140 could be reconstructed; however, she was made to live in a much smaller accommodation and in inhuman conditions. She has also stated that the three shops earlier existing in property B-139 were converted into two shops, thereby, she was left with no shop and also the construction on the first floor comprised only of big hall, without any kitchen and bathroom, which her mother-in-law used as dumping room. She claimed that on the portion where the third shop belonging to her husband was existing, the respondent built up two rooms and gave them on rental of Rs.10,000/- each per month. Besides, he was also earning Rs.50,000 to Rs. 60,000/- as income from Hakwers or *patriwalas*. She claimed that the appellant herein had approximate income of



Rs.1,00,000/- per month and has responsibility of only his wife to shoulder.

18. In her cross-examination (PW-1), the respondent has stated that she is 12th pass and a housewife. The school fee of children was exempted as having fallen under economic weaker section and she was bearing expenses like tuitions, clothing, stationery etc. in respect of her children. She admitted that electricity, water and other maintenance charges in respect of house occupied by her were paid by her father-in-law i.e. appellant. She also admitted having received widow pension of Rs.1,500/- per month. She denied having possession of any document to show that the properties were purchased out of proceeds of ancestral properties or to show income of Rs.50,000/- from Hawkers.

19. The appellant in support of his claims, got his wife examined as RW-1. In her affidavit filed in examination-in-chief, the mother-in-law of respondent herein, stated that the respondent has raised frivolous allegations against appellant and other family members at the instigation of her parents, who have evil eye on their properties. She has deposed that the properties acquired by the appellant are his self acquired properties and there was no contribution from the sale of any of the ancestral property. She stated that respondent ever since her marriage with their son lived in property bearing No. B-140 and never came to her matrimonial home after marriage, however, she has concocted false story to claim ownership of the property. It was further stated that in the property in possession of respondent, their son with family, comprising of wife and children, is staying and similar kind of room and set up has been provided to the respondent. It was further stated that on the day of demise of their son, the brother and parents of respondent,



went to their room in the matrimonial home and took away all the cash, jewellery articles etc. and put their lock on the room outside. She denied having any kind of rental income and stated that the house property i.e. B-139 is occupied by all the family members. This witness also denied that respondent ever handed over money to her or her husband.

20. Pertinently, the limited question for adjudication before this Court is as to whether the maintenance awarded by the learned Family Court vide impugned judgment dated 24.12.2019 is just in the facts and material of the present case.

21. It is relevant to note here the provisions of Section 19 of The Hindu Adoptions And Maintenance Act, 1956, which read 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 remarriage of the daughter-in-law.”



22. The learned Family Court has also taken note of the aforesaid provisions of Section 19 of the Act and in the facts of the present case observed as under:-

“19. Every family is presumed to be a joint Hindu family but there is no presumption in law that the properties owned by the member of the family of the respondent are the coparcenary properties. Burden to show that a particular property is a coparcenary property is on the person who alleges as such. During cross examination of RW1 (wife of the respondent), RW1 was suggested that father of the respondent had agricultural lands in village Gharoli, Delhi. It was also suggested that the said land was acquired by the government and thus the husband of this witness and his brother had filed claims for compensation before the government. It was also suggested that subsequently an application under section 18 of Land Acquisition Act, 1894 was filed for enhancement of the compensation amount in respect of that land situated in village Gharoli, which was acquired vide Award No. 18/83-84. RW1 was also suggested that subsequently the legal heirs of her father-in-law had also filed an appeal bearing No. 130/1990 against the Government of India seeking enhancement of compensation amount before the Hon'ble Delhi High Court. This witness was also suggested that properties in issue were purchased from the compensation amount received from the government. The witness either denied the suggestion or showed her ignorance about the acquisition proceedings. It is pointed out on behalf of the petitioner that the property Nos. B-137, B-139 and B-140 came to be acquired between 1979 to 1998 as would be apparent from the copies of power of attorneys on record. However, other than oral



suggestions, no documentary evidence came to be filed by the petitioner in that regard.

20. Present is not a suit for partition of the coparcenary properties. Thus, I need not go deep into the aspect of the nature of ownership of the three properties in these proceedings. The present proceedings have been initiated by a widow who seeks maintenance from her father-in-law.

23. The provision of Section 19 of the Act contemplate that a widow daughter-in-law has a right to seek maintenance from her father-in-law. The purport of Section 19 of the Act is to enable the widow daughter-in-law to seek maintenance from father-in-law in case she is unable to maintain herself from the estate of her husband. The only exception is that her right shall be restricted to the share of coparcenary property held in his hand. The learned Family Court refrained itself from observing upon the ownership of the properties, and rightly so, because the present appeal does not pertain to right of respondent in the property but only to maintenance awarded by the Family Court.

24. A coordinate Bench of this Court (of which one of us, Neena Bansal Krishna, J, was a member) in ***Laxmi & Anr. Vs. Shyam Pratap & Anr.*** 2022 SCC OnLine Del 1387 dealt with a case wherein the widowed daughter-in-law claimed maintenance from her in-laws (respondents) under Section 19 of the *Hindu Adoption and Maintenance Act, 1956* on the ground that even if the properties owned by them were self acquired, she is entitled to maintenance, observed and held as under:-



“14. 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.

15. 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.”

25. In the present case, the appellant has prayed that he has limited source of income, which is his pension and that too has been erroneously considered to be Rs.25,000 per month by the learned Family Court, out of which has to maintain his wife and also bear expenses of school fee of grandchildren and electricity, water bill etc. The learned Family Court while assessing his salary receipt of June, 2013 wherein his salary was recorded as Rs.25,187/- per month and since recommendations of the Seventh Pay Commission were implemented on 1.01.2016, therefore, on the day of his retirement, his pension was assessed as Rs.25,000 per month. However, for the purpose of granting relief under Section 19 of the Act, what is required to be seen is as to whether father-in-law has any coparcenary property in his possession.

26. The ownership of the properties may be in the name of appellant or his wife but from the copies of Domicile Certificate i.e. Domicile/88/882/5302/ 20/8/2009/8821001893/1327 Dated 31.12.2009 placed on record in respect of the said shop and also another license bearing MAT.APP.(F.C.) 61/2020



No. 313/F.W. Cell (East), P.S. N. A. Ngr dated 27.10.2007 for selling fire works from the said shop, is suffice to negate the claim of appellant that no shop was ever running from the property bearing No. B-139, Harijan Basti, Kondli, Delhi. The issuance of aforesaid License make it clear that a shop was running from the property bearing No. B-139, which has lost existence due to reconstruction. It is the claim of respondent that she was made to shift to property No.B-140 in name of reconstruction, whereas the appellant has claimed that the respondent always lived in property No.B-140 and never lived in property bearing No. B-139 and has concocted a false story to claim ownership. The learned Family Court in the impugned judgment has observed that respondent's right of residence and stay in property No.B-140 has already been protected by the court in proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005.

27. This Court has also gone through the copies of documents (Mark-A to D) pertaining to the three properties, which were placed on record before the learned Family Court by the respondent herself. These documents show that appellant and his wife are owner of the said properties and thus, these properties are self acquired properties of appellant and his wife. None of the three properties mentioned above has any share in the name of respondent's husband nor she has been able to establish that these were purchased out of sale proceeds of any ancestral property or out of the funds of her late husband.

28. In a somewhat similar matter on the aspect of grant of maintenance, the Hon'ble Supreme Court in *Vimalaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel & Ors.* (2008) 4 SCC 649 considered whether mother-in-



law can be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise, observed as under:-

“21. Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject-matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.

XXXX

XXXX

24. Section 4 provides for a non obstante clause. In terms of the said provision itself any obligation on the part of in-laws in terms of any text, rule or interpretation of Hindu Law or any custom or usage as part of law before the commencement of the Act, are no longer valid. In view of the non obstante clause contained in Section 4, the provisions of the Act alone are applicable. Sections 18 and 19 prescribe the statutory liabilities in regard to maintenance of wife by her husband and only on his death upon the father-in-law. Mother-in-law, thus, cannot be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise.”

29. Having observed above, the Supreme Court in ***Vimalaben Ajitbhai Patel (Supra)*** further held as under:-

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“48. Sympathy or sentiment, as is well known, should not allow the court to have any effect in its decision-making process. Sympathy or sentiment can be invoked only in favour of a person who is entitled thereto. It should never be taken into consideration as a result whereof the other side would suffer civil or evil consequences.”

30. Having regard to the decisions in **Vimalaben Ajitbhai Patel (Supra)**, this Court is of the opinion that appellant, who retired from service in the year 2018 and is in his old age, surviving on his pension, bearing responsibility of his wife and in whose self acquired property No.B-140 respondent has been given right to stay and residence, cannot be further shouldered with responsibility of paying maintenance to his daughter-in-law. In our opinion, the respondent is not entitled to benefit of maintenance under the provisions of Section 19 of the Act.

31. The present appeal is accordingly allowed and the impugned judgment dated 24.12.2019 is hereby set aside to the extent that the appellant shall continue to pay electricity and water bills in respect of the portion of the subject property where respondent is residing. It is made clear no recoveries in respect of maintenance amount already paid to the respondent by the appellant shall be made.

32. In terms as aforesaid, the present appeal is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2023/ab/r

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