



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

% Judgment delivered on: 12th October, 2023

+ **MAT. APP. (F.C.) 115/2020**

MASTER ADITYA VIKRAM KANSAGRA & ANR. ... Appellants

versus

MR. PERRY KANSAGARA

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Prosenjeet Banerjee, Ms. Mansi Sharma, Ms. Shreya Singhal and Ms. Astha Baderiya Advocates.

For the Respondents: Ex-Parte

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 22.02.2020 whereby in respect of a petition filed by the Appellants, under Section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Act), the Family Court directed the appellants to segregate the amount of maintenance claimed by each of them and directed Appellant No. 2 to pay *ad-valorem* court fee on the amount claimed by her.



2. Appellant No. 1 is the son of the Respondent and the Appellant No. 2 is the wife of the Respondent and mother of Appellant No. 1. Appellants filed the subject proceedings under Section 18 and 20 of the Hindu Adoption and Maintenance Act claiming maintenance from the Respondent.

3. The Family Court has held that as the Appellants have filed a Suit under Section 18 and 20 of the Hindu Adoptions and Maintenance Act, *ad-valorem* Court Fee is payable in terms of Section 7 of the Court Fees Act, 1870.

4. *Per contra*, learned counsel for the Appellants contends that the proceedings under Section 18 and 20 of the Hindu Adoptions and Maintenance Act are proceedings and not a Civil Suit and as such fixed court fee is payable as per the second Schedule.

5. Respondent was served with the notice of the appeal and had entered appearance and was represented through Counsel. On 20.05.2022, counsel for the Respondent stated that the Respondent had withdrawn the power of attorney granted to them to represent him and accordingly the vakalatnama of the Counsel was discharged and default notice was directed to be sent to the Respondent. On 12.09.2022, despite service of notice, none appeared for the Respondent and accordingly, respondent was proceeded ex-parte.



6. The question that arises for consideration is as to whether *ad valorem* court fee is payable on a claim for maintenance filed under Section 18 and 20 Hindu Adoption and Maintenance Act, 1956?

7. Maintenance can be broadly claimed by a Hindu wife under three provisions. Firstly under Section 18 of the Hindu Adoption and Maintenance Act, secondly under Section 24 and 25 of the Hindu Marriage Act, 1955 and thirdly under Section 125 Criminal Procedure Code., 1973 and a son under Section 20 of the Hindu Adoption and Maintenance Act and under Section 125 Criminal Procedure Code.

8. The relevant provisions of the Hindu Adoptions and Maintenance Act, 1956 read as under:

“18. Maintenance of wife.—(1) Subject to the provisions of this Section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claims to maintenance,—

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her ;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband ;

*(c) ******



- (d) *if he has any other wife living ;*
- (e) *if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere ;*
- (f) *if he has ceased to be a Hindu by conversion to another religion ;*
- (g) *if there is any other cause justifying her living separately.*

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or cease to be a Hindu by conversion to another religion.

20. Maintenance of children and aged parents.—(1) Subject to the provisions of this Section, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation :—In this Section “parent” includes a childless step-mother.



23. *Amount of maintenance.—(1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the Court shall have due regard to the consideration set out in sub-section (2) or sub-Section (3), as the case may be, so far as they are applicable.*

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to:—

- (a) the position and status of the parties ;*
- (b) the reasonable wants of the claimant ;*
- (c) if the claimant is living separately, whether the claimant is justified in doing so ;*
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;*
- (e) the number of persons entitled to maintenance under this Act.*

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to:—

- (a) the net value of the estate of the deceased after providing for the payment of his debts ;*
- (b) the provisions, if any, made under a will of the deceased in respect of the dependent ;*
- (c) the degree of relationship between the two ;*
- (d) the reasonable wants of the dependent ;*



- (e) *the past relations between the dependent and the deceased ;*
- (f) *the value of the property of the dependent and any income derived from such property; or from his or her earnings or from any other source ;*
- (g) *the number of dependents entitled to maintenance under this Act.*

25. *Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of Court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.”*

9. A Hindu wife, children and aged parents, subject to certain conditions, are entitled to be maintained by her husband, father or child as the case may be under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act. The amount of maintenance is assessed in terms of the conditions mentioned in Section 23 thereof and may be altered on change of circumstances in terms of Section 25 of the said Act.

10. The Relevant provision of the Hindu Marriage Act, 1955 read as under:

“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.

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this Section has re-married or, if such party is the wife, that she has not remained chaste, or,



if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

11. Under Section 24 of the Hindu Marriage Act, if any proceeding under the said Act are pending before a Court and if 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 litigation expenses, and also pay such monthly amount as the court deems reasonable keeping in view the income of the petitioner and the respondent. Section 24 of the said Act applies during pendency of the proceedings.

12. However, at the time of passing of the decree or at any time subsequent thereto, the court may under Section 25 of the said Act order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant. Such assessment is done based on the income, other property, conduct and other circumstances of the Applicant and the Respondent. The amount determined under Section 25(1) may be varied, modified or rescinded in terms of the conditions mentioned under Section 25(2) & (3).



13. Both under Section 24 and 25 of the Hindu Marriage Act, the proceedings for assessment of maintenance are initiated on an application being filed either by the wife or the husband as the case may be.

14. Wife, children and parents of a person unable to maintain themselves can claim maintenance under Section 125 of the Criminal Procedure Code. Section 126 lays down the procedure for disposal of the proceedings under Section 125 Cr.P.C.. Section 127 thereof provides for the powers of the Magistrate to alter the order of grant of maintenance or interim maintenance as the case may be.

15. Section 125 to 127 of Criminal Procedure Code 1973 read as under:

“125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) his father or mother, unable to maintain himself or herself,*



a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;*
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*



(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this Section if she is living in adultery, or if, without any sufficient



reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this Section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.

126. Procedure.—(1) Proceedings under Section 125 may be taken against any person in any district—

- (a) where he is, or*
- (b) where he or his wife resides, or*
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.*

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just.



127. Alteration in allowance.—(1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same Section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;



(c) *the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.*

(4) *At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.”*

16. Section 3 of the Family Courts Act, 1984 provides for setting up of Family Courts by the State Governments. Section 8 stipulates that where a Family Court has been established for any area the exclusive jurisdiction exercisable by any district court or any subordinate civil court and magistrate to try any suit or proceedings referred to in Section 7 of the Family Court Act shall stand vested in the Family Court. Section 7 of the said Act reads as under:

“7. Jurisdiction.—(1) Subject to the other provisions of this Act, a Family Court shall—

(a) *have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and*



- (b) *be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.*

Explanation.—The suits and proceedings referred to in this sub-Section are suits and proceedings of the following nature, namely:—

- (a) *a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*
- (b) *a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*
- (c) *a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*
- (d) *a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;*
- (e) *a suit or proceeding for a declaration as to the legitimacy of any person;*
- (f) *a suit or proceeding for maintenance;*
- (g) *a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*
- (2) *Subject to the other provisions of this Act, a Family Court shall also have and exercise—*



- (a) *the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and*
- (b) *such other jurisdiction as may be conferred on it by any other enactment.”*

17. Wherever a Family Court has been set up by the State Government, it has the exclusive jurisdiction to over all proceedings or Suits *inter alia* for maintenance be it either under the Hindu Adoptions and Maintenance Act, 1956, Hindu Marriage Act, 1955, Criminal Procedure Code, 1974 or any other statute.

18. In the present case, the proceedings have been instituted by the Appellant under the Hindu Adoptions and Maintenance Act before the Family Court.

19. As noticed hereinabove, a claim for maintenance by a Hindu wife can be filed under the Hindu Adoptions and Maintenance Act, Hindu Marriage Act and the Code of Criminal Procedure. Under the Hindu Marriage Act the claim would be filed under Section 24 for interim maintenance and under Section 25 for Permanent Alimony. In both case the claim would be lodged by way of an application and fixed Court fee is to be affixed on the application/petition. In case of a claim under the Hindu Marriage Act, fixed Court Fee of Rs. 15/- is to be affixed in terms of Article 14A of Schedule II of the Court Fees



Act, 1870. Even in a claim for maintenance filed under Section 125 Cr.P.C. fixed court fee of Re. 1.25 is to be affixed on the application/petition.

20. The Trial Court, by the impugned order has held that a claim for maintenance under Section 18 and 20 of the Hindu Adoptions and Maintenance Act would be by filing a Suit and as such *ad valorem* Court Fee would be payable in terms of Section 7(ii) of the Court Fees Act.

21. Section 7(ii) of the Court Fees Act, 1870 lays down as under:

“7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for maintenance and annuities.—(ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

22. All claims for maintenance whether under the Hindu Adoptions and Maintenance Act, Hindu Marriage Act or the Code of Criminal Procedure are within the exclusively jurisdiction of the Family Courts, wherever they have been set up. In Delhi Family Court have been set up and as such all such application, petitions or Suits lie exclusively



before the Family Courts. The procedure to be adopted in all such proceedings is similar. Even the parameter to be applied by the Family Courts for assessing interim and final maintenance is identical.

23. If it were to be held that a wife who chooses to claim maintenance under the Hindu Marriage Act and the Code of Criminal Procedure Code would be liable to pay fixed Court fee of Rs. 15/- or Re. 1.25p respectively but a wife who claims maintenance under the Hindu Adoptions and Maintenance Act would be liable to pay *ad valorem* court fee calculated at ten times the amount claimed to be payable for one year, same would be discriminatory and would militate against very concept of the said provisions being beneficial, enacted for the benefit of the children and wife who have been neglected by the father or husband as the case may be and who do not have sufficient means to maintain themselves.

24. Imposition of a condition on a wife or a child who has been neglected and who does not have sufficient means to maintain herself or himself to pay *ad valorem* Court fees calculated on ten times the amount claimed for one year would be discriminatory, unreasonable and onerous. Particularly when this condition would be applicable only if the claim is made under the Hindu Adoptions and maintenance Act and as noticed above if such a claim is made Hindu Marriage Act a fixed court fee of Rs. 15/- and if under Code Of Criminal Procedure



a fixed court fee of Re. 1.25p, is payable irrespective of the claimed amount. The unreasonableness is further highlighted in view of the fact that the proceedings would be before the same forum i.e. the Family Court which would apply the same procedure and take into account the same factors for assessment of the maintenance in all cases.

25. Reference may be had to the Judgment of the Division Bench of the Rajasthan High Court in *Mamta vs. Hari Kishan* AIR 2004 Raj. 47 where in the Division Bench has held that the proceedings before the Family Courts are not Suits and are Petitions or applications and *ad valorem* Court Fees is not payable.

26. The Division Bench in *Mamta (supra)* was also considering a similar objection raised in respect of proceedings initiated under Section 18 and 20 of the Hindu Adoptions and Maintenance Act. The Divisions Bench held as under:

“12. The Family Courts Act was enacted with an object to set up a forum for settlement of family disputes with due emphasis on conciliation and achieving socially desirable results and further to eliminate the rigid rules of procedure and evidence. The Law Commission in its 59th report (1974) had also stressed that in dealing with the disputes concerning the family, the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and it should make reasonable efforts at settlement before the



commencement of the trial. It covers the exclusive jurisdiction of the matters relating to:

- (i) *matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage, or as to the matrimonial status of any person;*
- (ii) *the property of the spouses or of either of them;*
- (iii) *declaration as to the legitimacy of any person;*
- (iv) *guardianship of a person or the custody of any minor;*
- (v) *maintenance, including proceedings under Chapter XI of the Code of Criminal Procedure.*

13. It makes an attempt to simplify the rules of evidence and procedure as to enable a Family Court to deal effectively. One of the objectives is to bring succor to women and children, who have been abandoned by her husband and others. Rule 7 speaks of initiation of proceedings before the Family Court by way of plaint or petition or application or otherwise, as the Court thinks fit. The Framers of the rules have casually incorporated all sorts of alternatives i.e. plaint or petition or application. In case, the action instituted before the Family Court is taken as a plaint and tried as a suit, we are of the view that the entire purpose of setting up Family Courts will be frustrated. With a view to deal with the action in a matrimonial dispute more quickly different from the procedure adopted in ordinary civil proceedings, the action will have to be taken as instituted on application. Any other interpretation asking to pay ad valorem court-fees will operate harshly and tends to price justice out of reach of many distress litigants and destroying the very object of setting-up of the Family Courts. Thus, when a woman and the children ask for the maintenance, the proceedings are to be initiated by way of an application. Section 7 of the Family



Courts Act directs that the Family Court shall deal for the purpose of exercising the jurisdiction under the Act to be the district court or other subordinate civil court for the area to which the jurisdiction of the family court exists. Thus, Section 7(1)(f) of the Act takes within its purview a suit or proceeding between the parties to a marriage with respect to the property of the parties or any of them. Since the proceeding before the Family Court commences by way of a petition or an application, it is obvious that such an application would be governed by Schedule II of the Rajasthan Court Fees and Suit Valuation Act, 1961. Sub clause (k) of Clause 11 of Schedule II of the Act of 1961 reads as follows:

SCHEDULE II Fixed Fees

<i>Article</i>	<i>Particulars</i>	<i>Proper fee</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>11</i>	<i>Original petitions not other-wise provided for when filed on-</i>	
	<i>(i) a court subordinate to the High Court;</i>	<i>(Two rupees)</i>
	<i>(ii) the High Court.</i>	<i>(Ten rupees)''</i>

14. Thus, the Court fee shall be payable under the above extracted residuary clause. As we have held that a proceeding before a Family Court is not a suit, Section 22 of the Rajasthan Court Fees and Suit Valuation Act, 1961 is not attracted. Section 22 is extracted as follows:

22. Suit for maintenance and annuities - In the suits hereinafter mentioned, fee shall be computed as follows:—

(a) in a suit for maintenance, on the amount claimed to be payable for one year,

... ..



15. A bare look at Section 22 of the aforesaid Act shows that the said provision is applicable to suits and not applications or proceedings. The action instituted by the appellant wife and the children under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 is a proceeding in view of Section 7(f) and not a suit. Thus, the provisions of Section 22 of the Rajasthan Court Fees and Suit Valuation Act has no application. Our view is fortified by a Division Bench judgment of the Kerala High Court in Saleesh Babu v. Deepa (1996 (2) HLR 441). It is well established law that in case of fiscal Statute, the provision must be strictly interpreted giving every benefit of doubt to the subject and lightening, as far as possible, the burden of court-fees on litigant. Where an adjudication falls within two provisions of court-fees Act one of which onerous for the litigant and other more liberal, the Court would apply that provision which is beneficial to the litigant. Reference be made to AIR 1957 SC 657 : AIR 1965 SC 457 AND (1976) 3 SCC 800. Accordingly, we hold that all the petitions in the Family Courts are in the nature of petitions or applications and the court-fees is payable under the Clause 11(k) of the Schedule II of the Rajasthan Court Fees and Suit Valuation Act.

(underlining supplied)

27. A Division Bench of the Punjab and Haryana High Court in *Balwinder Singh Versus Sinderpal Kaur and another* 2019 SCC OnLine P&H 6930 : (2019) 4 RCR (Civil) 720 (DB) referring to the decision of the Rajasthan High Court in *Mamta (supra)* also held that the proceedings before the Family Courts are summary in nature and are not Suits and that if a petition is filed before the Family Court for the purpose of maintenance then in terms of Section 7 of the Act *ad valorem* Court fee is not liable to be paid because the proceedings



initiated are in the nature of the petition and not the suit.

28. In the instant case, the Family Court has declined to apply the ratio of the decision in *Mamta (supra)* on the ground that in *Mamta (supra)* the Division Bench had referred to Rule 7 of the Rajasthan High Court Family Court Rules, 1994 and there was no such rule framed by the Delhi High Court.

29. The Family Court in the present case has clearly erred in not correctly appreciating the ratio of the Judgment in *Mamta (supra)*. Rule 7 of the Rajasthan High Court Family Court Rules merely stipulates that “*All actions instituted before the Court shall be by way of plaint, or petition or application or otherwise as the Court thinks fit*”.

30. The Family Court has erred in not appreciating that the reference to Suits, Proceedings and applications in the Family Courts Act is a broad reference to all proceedings. In *Mamta (supra)* and *Balwinder Singh (supra)*, the ratio is that the object of the Family Courts Act was to set up a forum for settlement of family disputes with due emphasis on conciliation and achieving socially desirable results and further to eliminate the rigid rules of procedure and evidence. Family Courts Act was enacted pursuant to the 59th (1974) of Law Commission wherein it was stressed that in dealing with the



disputes concerning the family, the family court should adopt an approach radically different from that adopted in ordinary civil proceedings and it should make reasonable efforts at settlement before the commencement of the trial.

31. The Family Courts Act makes an attempt to simplify the rules of evidence and procedure as to enable a Family Court to deal effectively. One of the objectives is to bring succor to women and children, who have been abandoned by her husband and others.

32. The Rajasthan High Court has held that the Framers of the rules have casually incorporated all sorts of alternatives i.e. plaint or petition or application and in case, the action instituted before the Family Court is taken as a plaint and tried as a suit, the entire purpose of setting up Family Courts will be frustrated. Thus it held that with a view to deal with the action in a matrimonial dispute more quickly different from the procedure adopted in ordinary civil proceedings, the action will have to be taken as instituted on application. Any other interpretation asking the claimant to pay ad valorem court-fees will operate harshly and would tend to price justice out of reach of many distress litigants and destroy the very object of setting-up of the Family Courts. Thus, when a woman and the children ask for the maintenance, the proceedings are to be initiated by way of an application.



33. The Court referred to Section 22 of the Rajasthan Court Fees and Suit Valuation Act, 1961 which is similar to the Section 7(ii) of the Court Fees Act 1870 applicable to Delhi. The Division Bench has thus held that action instituted by the appellant wife and the children under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 is a proceeding in view of Section 7(f) and not a suit and all the petitions in the Family Courts are in the nature of petitions or applications.

34. Further, as noticed hereinabove, a Hindu wife can claim maintenance from her husband under Section 24 and 25 of the Hindu Marriage Act; Section 125 Code of Criminal Procedure and under Section 18 of the Hindu Adoptions and Maintenance Act. All such claims are exclusively within the domain of the Family Courts and the Family Court is required to adopt the same procedure for adjudicating these claims and also apply same parameters for assessing maintenance. For claims under the under Section 24 and 25 of the Hindu Marriage Act a fixed Court Fee of Rs. 15/- and for a claim under Section 125 Code of Criminal Procedure fixed Court Fee of Re. 1.25p is payable. Thus, to hold that for a claim of maintenance under Section 18 and 20 of the Hindu Adoptions and Maintenance Act *ad valorem* court fee calculated on ten times the amount claimed for one year would be discriminatory, unreasonable and onerous.



35. In *Karbhari Vithoba vs. Anusuya Karbhari AIR 1958 Bombay 425*, a Division Bench of the Bombay High Court held that a petition under the Hindu Marriage Act must be regarded as a Petition of the nature described in Article 1(b) of the Schedule – II of the Court Fee Act and is liable to court – fee accordingly. Similarly, a Division Bench of the Patna High Court in *Srikant Chand vs. Mt. Ram Mohini AIR 1959 Pat 186* held that an Application or Petition when presented to a civil court and not otherwise provided or in the Court Fees Act would be covered by Article 1(b) of Schedule II of the Court Fees Act.

36. Article 1(b) of Schedule II of the Court Fes Act as amended for Delhi reads as under:

SCHEDULE II

Fixed Fee

	Number		Proper Fee
1.	Application or Petition	(a) ***** (b) ***** or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise	One rupee twenty-five naye paise



		provided for by this Act; or ***** (c) *****	

37. Accordingly, it is held that proceedings under Section 18 and 20 of the Hindu Adoptions and Maintenance Act are not Suits and *ad valorem* court fee is not liable to be paid. They are proceedings on which fixed Court Fee of Re. 1.25p would be payable.

38. The impugned order dated 22.02.2020 whereby the Family Court directed the appellants to segregate the amount of maintenance claimed by each of them and directed Appellant No. 2 to pay *ad-valorem* court fee on the amount claimed by her is set aside. Petitioners shall be liable to pay fixed court fee of Re. 1.25p. on the petition.

39. The appeal is allowed in the above terms. There shall be no orders as to Costs.

40. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J.

VIKAS MAHAJAN, J.

October 12, 2023/HJ