



* IN THE HIGH COURT OF DELHI AT NEW DELHI
%
Reserved on: 24th August, 2023
Pronounced on: 13th September, 2023

+ MAT.APP.(F.C.) 89/2018

MALINI CHAUDHRI Appellant

Through: Appellant in person.

versus

RANJIT CHAUDHRI & ANR. Respondents

Through: Mr. Kapil Arora, Ms. Manjula Baxla & Mr. Prashashti Bhatt, Advocates with respondent in person.

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

J U D G M E N T

NEENA BANSAL KRISHNA, J

CM APPL. 17818/2018(Condonation of delay)

1. *Vide* the present application, the applicant/appellant seeks condonation of 60 days' delay in filing the present appeal.
2. For the grounds and reasons stated in the present application, the application is allowed, the delay of 60 days in filing the present appeal is condoned.
3. Accordingly, the present application is disposed of.

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4. The present **Appeal under Section 19 of the Family Courts Act,**

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1984 read with Sections 96 and 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the appellant against the impugned Order dated 04.01.2018 passed by the learned Judge, Family Court, South-East, Saket, New Delhi, whereby the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 of the respondents herein has been allowed and the Petition under Section 22 of the Hindu Adoption and Maintenance Act, 1956 (*hereinafter referred to as 'HAMA'*) of the appellant for claiming maintenance has been rejected.

5. The appellant is the daughter of respondent No. 2/Smt. Indira Chaudhri and Late Shri Vijay Kumar Chaudhri/father and the sister of respondent No. 1/Ranjit Chaudhri. She is a divorcee and filed the Petition under Section 22 of HAMA claiming maintenance from the respondents.

6. The grandmother of the appellant came from Pakistan to Delhi and acquired privileged properties and estates under the Re-settlement Scheme and also secured employment with the assistance of the Indian as well as the British Government. After the demise of grandmother, her properties and estates devolved upon Shri Vijay Kumar Chaudhri, father of the appellant and respondent No.1.

7. The father of the Appellant died in the year 1999, leaving behind four legal heirs, namely, his wife/respondent No. 2, son, Mr. Ranjit Chaudhri/respondent No. 1, daughters, Smt. Kamini Wahi and the appellant/Malini Chaudhri. The appellant has claimed that she was not given any share as a legal heir.

8. It was also claimed that the father of the appellant had left the Will



dated 25.09.1999, whereby 9 acres of land situated near Rozka Village, Haryana to the appellant and her sister, Smt. Kamini Wahi. Because of the details and the Khasra No. of these 9 acres of land were not specified, the appellant was never able to trace the land and never got any share in the land. The Probate Petition No. 191/2000 was filed before the Calcutta High Court in respect of Will dated 25.09.1999 of Late Shri Vijay Kumar Chaudhri and the same was probated on 10.07.2000.

9. The appellant had further asserted that a joint meeting of family members was held and the respondents agreed to pay Rs. 45,000/- per month to the appellant towards her maintenance, on an assurance that she would not press for her share in the property bequeathed by her father. Accordingly, the respondents had been paying the maintenance to the appellant regularly till November, 2014. But thereafter, they failed and neglected to pay any maintenance. Faced with the extreme shortage of funds, she demanded her share in the ancestral properties, but the respondents flatly declined to give her anything.

10. The appellant got married to one Mr. John Fletcher in the year 1995 in Guru Bumli Bala. However, the appellant's husband, Mr. John Fletcher deserted the appellant and went to the United States of America (USA) and eventually, the appellant was granted *ex parte* divorce on 30.09.2001.

11. The appellant has claimed that the respondents be directed to pay her an amount of Rs 1,00,000/- per month as maintenance as she is a dependant of HUF under Section 22 of HAMA.

12. **The respondents** filed the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the petition of the



appellant as being barred by law. It was stated that in view of the admitted fact of the appellant being married to Mr. John Fletcher, she is not a 'dependant' as provided under Section 21 of the HAMA, and thus, she is not entitled to maintenance from her brother and mother. The application was allowed *vide* Order dated 04.01.2018 and the petition was rejected.

13. Being aggrieved by the impugned Order dated 04.01.2018, the present appeal has been preferred by the appellant.

14. The appellant has asserted that the issue whether she is a "dependant" under Section 21 of the HAMA Act is a mixed question of fact and law which cannot be decided summarily. Her expenses include salary to maid servants, drivers, cooks, daily food and medical expenses and other sundry expenses, which add up to Rs. 75,000/- per month. It is claimed that the learned Judge did not take into consideration that she did not receive any money, alimony or maintenance from her husband, Mr. John Fletcher. As her husband is not traceable, the appellant cannot seek any alimony or maintenance from him.

15. **Submissions heard.**

16. It is the admitted case of the parties that the appellant is the daughter of the respondent No. 2 and sister of the respondent No. 1. She as per her own averments, had got married to Mr. John Fletcher in the year 1995 and got divorced from him in the year 30.09.2001. Thus, the appellant is a divorcee.

17. The claim for maintenance has been made under Section 21 of HAMA which provides for the dependents who may claim maintenance.

18. It provides for 9 categories of relatives in which the "divorced



daughter” does not feature. An unmarried or widowed daughter is recognized to have a claim in the estate of the deceased, but a “*divorced daughter*” does not feature in the category of dependents entitled to maintenance.

19. The appellant being a divorcee has a claim for maintenance against her husband even after her divorce. The appellant being conscious of her right of maintenance against the husband, has sought to explain that since her husband is not traceable, she is unable to claim maintenance from him. However difficult situation as it may be, but under the HAMA as she is not a “dependent” as defined under the Act and thus not entitled to claim maintenance from her mother and brother.

20. Pertinently, the appellant has admitted that her father *vide* Will dated 25.09.1999 had bequeathed 9 acres of land situated near Rozka Village, Haryana to her and her sister/Kamini Wahi. Though she claims that since the exact location and address of the land was not mentioned, she was not able to trace the land to claim her share, but during the course of arguments, learned counsel for the respondents had clarified that the land was sold in the year 2001 jointly by the appellant and the sister, Smt. Kamini Wahi and they had shared the sale proceeds.

21. As has been rightly observed by the learned Judge, Family court, the appellant has already received her share from the estate of her father and having received her share, she cannot again raise any claim of maintenance afresh from the respondents.

22. It is significant to observe that in a joint meeting, considering the situation of the appellant, the mother/ respondent No. 2 had agreed to pay



her Rs. 45,000/- per month which has been paid till November, 2014.

23. Significantly, it has also been disclosed that the respondent No. 2/mother had purchased the Flat No. 4A, Second Floor, D2, Kalini Kunj, New Delhi-110065 jointly with the appellant from her own funds, only with an intent to secure the well-being of the appellant. The respondent No. 2/mother has already made arrangements for providing the residence to the appellant. It cannot be overlooked that the respondents being the brother and mother had also supported the daughter/appellant by voluntarily giving her Rs.45,000/- per month to her till 2014.

24. The learned Judge, Family Court, has observed that appellant being the divorced daughter of the respondent No. 2 and sister of the respondent No. 1, is not entitled to claim any maintenance in the above discussed circumstances under the Hindu Adoption and Maintenance Act.

25. We find no infirmity in the impugned Order dated 04.01.2018 rejecting the Petition under Section 22 of the Hindu Adoption and Maintenance Act.

26. Accordingly, the present appeal along with pending applications, if any, is dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE



SEPTEMBER 13, 2023
S.Sharma

