

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

**WRIT PETITION NO.2075 OF 2024**

|                                   |                |
|-----------------------------------|----------------|
| Sachin Shrimant Vhanmane and Anr. | ...Petitioners |
| <b><i>Versus</i></b>              |                |
| Saraswati Sidram Vhanmane         | ...Respondent  |

Mr. Anvil S. Kalekar for the Petitioners.

Mr. Ajit V. Alange for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : 4<sup>th</sup> MARCH, 2024.**

**P. C. :**

1. By this petition the challenge is to the order dated 21<sup>st</sup> March 2022 passed by the Trial Court under Section 23 of the Hindu Adoption and Maintenance Act, 1956 (the Act) directing the petitioner to pay interim maintenance of Rs.7,500/- from the date of the order. Application came to be filed by the respondent being the dependent as wife of deceased brother of petitioner No.2. Petitioner No.1 is nephew of respondent. The claim for interim maintenance was filed as property of the deceased brother being Block No.312 and 433/2 came into hands of petitioner under an alleged Will of 19<sup>th</sup> July 2016 . Prior thereto the respondent had filed Special Civil Suit No.362/2023 which was decreed for sum of Rs.700/- as maintenance and charge of maintenance was

created on Block No. 312 and 433/2. It is subsequently that in the year 2016 by virtue of the Will the estate of the deceased came into the hands of the petitioner. As no maintenance was being received, Regular Civil Suit No.883/2018 was filed claiming permanent maintenance. In this proceedings by way of Interim Application below Exhibit 5 interim maintenance of Rs.15,000/- was sought. The Trial Court by impugned order granted maintenance of Rs.7,500/- p.m. from the date of the order.

2. Heard Mr. Anvil S. Kalekar for the petitioners and Mr. Ajit V. Alange for the respondent.

3. Mr. Kalekar, learned counsel for the petitioners would submit that while granting interim maintenance the Trial Court has not taken into consideration the provisions of Section 23 of the Hindu Adoption and Maintenance Act 1956. He submits that it is only after the factors enumerated therein are taken into consideration the amount of interim maintenance could have been granted. He submits that with consent Block No.312 was sold and the respondent had received part of sale proceeds. He submits that in respect of the same properties charge was created and sum of Rs.700/- was granted. He submits that Application does not indicate that the same is for enhancement. He

submits that the findings of the Trial Court are bereft of the factors which are taken into consideration while granting interim maintenance. In support he relies upon the following decision in the case of *Om Prakash Puri vs. Nandita Puri, 2014(6) Mh. L. J.*

4. *Per contra*, Mr. Alange, learned counsel appearing for the respondent would submit that the provisions of Section 25 of the Act enable the Court to alter the amount of maintenance on change of circumstances. He submits that provisions of Section 28 of the Act provides a right to the dependent to receive maintenance out of the estate where estate has been transferred. He submits that Trial Court has taken into consideration the change in the economic situation and as such granted maintenance of Rs.7,500/-

5. Considered the submissions and perused the record.

6. The admitted position is that estate of the husband of the respondent has come into hands of the petitioner under an alleged Will of the year 2016. It is also not disputed that charge was created on the estate by virtue of decree passed in the Suit of 1998. Maintenance which has

been granted was sum of Rs.700/- p.m. Upon the death of the husband respondent had filed Regular Civil Suit No.883/2018 claiming maintenance of Rs.15,000/- from the petitioner as the estate of the deceased has come to their hands. Perusal of the pleadings indicate that the fact of the earlier charge being created has been mentioned. It is further pleaded that there is no source of income to the respondent and by the alleged Will the estate of the deceased has come into hands of the petitioner. It is also pleaded that petitioners are not paying maintenance to the respondent and as such sum of Rs.15,000/- is claimed as maintenance.

7. Provisions of Section 25 of the Act enable the Court to alter amount of maintenance when there is material change in circumstance justifying such alteration. The pleadings on record would sufficiently indicate the change in the circumstances inasmuch as there has been death of the husband pursuant to which estate of the deceased has come into the hands of the petitioners who have failed to provide any maintenance. Coupled with this position is the fact that maintenance of Rs.700/- was granted in the year 1998 and after 20 years the amount of maintenance could not remain static. Section 28 of the Act entitles the respondent being the dependent of the deceased to receive maintenance out of the estate which has come into the hands of the petitioners by

virtue of the alleged Will.

9. As regards the contention that sub-section 3 of Section 23 of the Act was not considered by the Trial Court while granting maintenance, sub-section 3 provides that in determining the amount of maintenance regards to be had to the net value of the estate of the deceased after providing for payment of his debts, provision, if any, made under the Will of the deceased in respect of dependent, value of the property of the dependent, earnings etc. As the estate of the deceased came into hands of the petitioner, the net value of the estate of the deceased after providing for payment of his debt was within the knowledge of the petitioners. Similarly, the Will was in custody of the petitioners and provisions made under the Will was also within knowledge of the petitioners. Admittedly, the respondent does not have any source of income and as such there was no question of revealing any of the properties of the dependent. The factors which were required to be taken into consideration were required to be brought on record by the petitioners and admittedly the reply filed by the petitioner does not produce any material on record. Trial Court has considered that the sum of Rs.700/- was granted in the year 1998 and a period of almost 20 years has lapsed since passing of the order. As such no fault can be found with

the Trial Court for taking a view that the rate of inflation being much higher than 1998, the amount of maintenance is not sufficient for sustenance of the respondent. Although sum of Rs.15,000/- was sought as maintenance, the Trial Court has granted amount of Rs.7,500/-. No fault can be found in the discretion which has been exercised based on the material which has come on record.

10. Writ Petition being devoid of merits stands dismissed.

(SHARMILA U. DESHMUKH, J. )