

THE HIGH COURT OF MADHYA PRADESH
M.P. No. 2400/2019
Kumari Jhalak V/s. Deceased Rahul through Smt. Seema
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Indore, dated : 20.11.2019

Shri Kamlesh Mandloi, learned counsel for the petitioner/decreed-holder.

Shri Satish Tomar, learned counsel for the respondent.

With consent of learned counsel for the parties, heard finally.

ORDER

The petitioner has filed the present petition being aggrieved by order dated 21.1.2019 passed by 1st Addl. Principal Judge, Family Court, Indore, whereby the execution proceeding has been closed on account of death of the judgment-debtor.

2. Facts of the case, in short, are as under :

(i) The marriage of Rahul Tripathi and Sonal Bhargava was solemnized on 10.5.1997. Smt. Sonal gave birth to the present petitioner on 21.7.1998. After some time, dispute arose between husband and wife and they jointly filed an application for divorce u/s. 13-B of the Hindu Marriage Act before the Civil Court. Vide judgment dated 13.5.2005, decree of divorce was granted in HMA Case No.44/2004. At that time, the petitioner was aged about 6 years and her custody was given to the mother – Sonal Bhargava and both have started living at 16, Race Course Road, Anand Park, Indore. According to the petitioner, her mother Sonal Bhargava had accepted only the 'Stridhan' and declined to receive permanent maintenance.

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(ii) The present petitioner filed an application u/s. 20 & 23 of Hindu Adoption & Maintenance Act, 1956 before the Family Court, Indore against her father – Rahul Tripathi seeking maintenance of Rs.10,000/- per month. According to the petitioner, her father is having Paints & Chemical factory in Mandideep, Bhopal, his standard of living is much higher and he is owning house and vehicles, etc. She is aged about 10 years and studying in St. Raphael School, Indore, for higher education, treatment, coaching and dance-classes, etc., she needs amount of Rs.10,000/- per month and for which her father is capable to give her as maintenance.

(iii) Rahul Tripathi appeared before the Family Court and opposed the aforesaid application for maintenance.

(iv) Learned 1st Addl. Principal Judge, Family Court, Indore has rejected the contention of Rahul Tripathi that he has paid Rs.5,00,000/- for maintenance of his daughter and her mother has forgone the right to claim maintenance to her. Learned Family Court has held that the mother cannot take away the right of daughter, hence she is entitled to Rs.5,000/- as maintenance. Vide order dated 28.4.2011, learned Family Court has directed Rahul Tripathi to give Rs.5,000/- per month to the petitioner till she attains the age of majority and till marriage.

(v) According to the petitioner, for giving the maintenance to her in compliance of the aforesaid order, her father – Rahul Tripathi created a FDR of Rs.7,00,000/- in HDFC Bank with instructions to transfer amount of Rs.5,000/- in the Account of

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the petitioner. Rahul Tripathi expired on 8.3.2014 and she received Rs.5,000/- per month till April, 2015 in her Account. Thereafter, the present respondent who is second wife of Rahul Tripathi has instructed the Bank to break the FDR and transfer the amount of Rs.7,00,000/- her her Account and accordingly, she has been estopped from getting the maintenance amount. She approached the Family Court by way of execution proceedings against the respondent.

(vi) The respondent appeared before the executing Court and raised an objection the maintenance to the petitioner was payable during the life time of her father and after his death, she is not liable to pay the maintenance amount to the petitioner.

(vii) Learned Executing Court by placing the reliance over the provisions of Section 20 & 28 of the Hindu Adoption & Maintenance Act has held that the execution proceedings cannot continue against the respondent who was not the party in the judgment and decree, hence closed the execution proceedings, hence the present petition before this Court.

3. I have heard the learned counsel for the parties and perused the record.

4. It is not in dispute that now the petitioner has attained the age of majority, but according to her she is entitled to get the maintenance amount till her marriage in compliance of the judgment and decree dated 28.4.2011. By the aforesaid judgment, learned Family Court has directed Late Rahul Tripathi to pay the maintenance amount of Rs.5,000/- per month

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to her till she attains the age of majority and gets married. For the purposes of payment of the aforesaid maintenance amount, Rahul Tripathi had created FDR and gave standing instructions to the Bank for transfer of amount of Rs.5,000/- to the petitioner's Account in ICICI Bank.

5. The sole issue under consideration is, whether the petitioner is still entitled to get amount of Rs.5,000/- even after the death of her father i.e. judgment-debtor?

6. The petitioner claimed the maintenance under the provisions of Hindu Adoption & Maintenance Act. Chapter 3 of the Act deals with the maintenance to a Hindu. As per Section 20(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. Sub-section (2) provides that a legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. Under sub-section (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 is unable to maintain himself or herself out of his or her own earnings or other property. The word "dependant" is defined in Section 21 and Clause (v) includes his or her unmarried daughter also.

7. As per Section 22(1), subject to the provisions of sub-section (12), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate

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inherited by them from the deceased. As per sub-section (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. Likewise, Section 26 provides that debts to have priority over the claims of dependant for maintenance under this Act. As per Section 27, the dependant's claim for maintenance shall not be a charge on a estate of the deceased or portion thereof unless one has been created by the will of the deceased by a decree of Court, by agreement between the dependant and the owner of the estate or portion, or otherwise. Section 20 to 27 of the Hindu Adoption & Maintenance Act are reproduced below :

“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 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 stepmother.

21. Dependents defined- For the purposes of this Chapter "dependents" 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 remarry;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain

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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 for 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 remarry; 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;

(xi) 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 dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent 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 take 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 dependent 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.

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 maybe, so far as they are applicable.

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(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 earning 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 provision, 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 course;
- (g) the number of dependents entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu- No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

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.

26. Debts to have priority-Subject to the provisions contained in Section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependents for maintenance under this Act.

27. Maintenance when to be a charge- A dependent's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependent and the owner of the estate or portion, or otherwise."

Therefore, it is clear from the aforesaid legal provisions that the unmarried daughter is entitled to claim maintenance till her

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marriage. The heir of the deceased Hindu are bound to maintain the dependant of a Hindu out of the estate inherited by them from the deceased. The dependant's claim for maintenance under this Act shall be charged on the estate of the deceased if the charge is created by a Will of the deceased or by a decree of a Court. The dependant has a right to receive the maintenance out of the estate of the deceased.

8. In the present case, the petitioner is having a decree to get the maintenance till she attains the age of majority and gets married. For payment of maintenance, her father – deceased Rahul Tripathi had created a FDR from which she used to get Rs.5,000/- per month by way of transfer to her Bank Account. After the death of her father, the respondent has broken the FDR and instructed the Bank to transfer the amount of FDR in her Account. The right of the petitioner has been created by a decree of the Court to get the maintenance and the FDR was a “estate” of the deceased from which she is entitled to get the maintenance.

8. Order 21 Rule 30 of C.P.C. provides execution of money decree and according to which, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property, or by both. Therefore, even if the judgment-debtor has expired, the money decree is liable to be executed by attachment of his property.

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9. In view of the above, the impugned order is liable to be and is hereby set aside. The execution proceedings are restored. Both the parties are directed to appear before the learned executing Court, who shall proceed with the execution proceedings in accordance with law.

(VIVEK RUSIA)
JUDGE

Alok/-