
Before Iqbal Singh, J

MOHINDER SINGH,—*Defendant/Petitioner*

versus

PARAMJIT KAUR AND OTHERS,—*Plaintiffs/Respondents*

C.R. No. 1288 of 1999

7th December, 1999

Code of Civil Procedure, 1908—S. 151—Hindu Adoption and Maintenance Act, 1956—S. 18—Trial Court awarding interim maintenance to the plaintiffs during the pendency of the suit under section 18—S. 18 does not empower the Court to grant interim maintenance—Whether the Court has jurisdiction to pass such interim order.

Held, that there is no dispute about relationship of the petitioner with the respondents. The plaintiffs moved application for grant of interim maintenance, *inter alia*, pleading that they had no source of income and were unable to maintain themselves. This allegation was refuted by the present petitioner by filing a reply. The Court below after taking into consideration the rival contentions raised by the counsel for the parties and having regard to the facts and circumstances of the case, awarded interim maintenance in the sum of Rs. 300 per month to each of the plaintiffs. I find no illegality or material irregularity in the impugned order so as to warrant interference in the matter of awarding interim maintenance.

(Para 5)

Ashok Singla, Advocate,—*for the Petitioner.*

Satinder Khanna, Advocate,—*for the Respondents.*

JUDGMENT

Iqbal Singh, J

(1) The plaintiff-respondents filed a suit for declaration to claim maintenance as contemplated under section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short the Act), from the petitioner, who is husband of respondent No. 1 and father of respondents 2 and 3. During the pendency of the suit, the plaintiffs moved an application for the grant of interim maintenance. The trial court after relying upon a judgment of the Supreme Court in *Smt. Jasbir Kaur Sehgal v. The*

District Judge, Dehradun (1) and a judgment of the Bombay High Court in *Sangeeta Piyush Raj vs. Piyush Chaturbhun Raj* (2) accepted the application and directed the petitioner to pay Rs. 300 per month to each of the plaintiffs, as interim maintenance from the date of the application. Hence this revision at the instance of the defendant.

(2) I have heard learned counsel for the parties. Learned counsel for the petitioner vehemently contended that section 18 of the Act does not authorise the award of interim maintenance pending decision of the claim as to the maintenance. He further contended that there being no provision in any statute expressly conferring such powers on the trial court, interim maintenance could not have been granted. In support of his contentions, learned counsel placed reliance on various judgments, namely, *K.S. Deenadayalu Reddy v. Lalithakumari* (3), *Gorivelli Appanna v. Gorivelli Seethamma* (4), *Sodagar Singh v. Smt. Harbhajan Kaur and others* (5), *Ramchandra Behera and others v. Smt. Snehalata Dei* (6) and *Makhan Singh v. Jagdish Kaur and others* (7). Learned counsel for the respondents on the other hand contended that the impugned order does not call for any interference and the trial court was fully justified in granting interim maintenance and it, otherwise also, was necessary because the plaintiffs had no independent source of income to keep their bodies and souls together during the pendency of the suit. Learned counsel placed reliance on a judgment of the Supreme Court in *Smt. Savitri v. Govind Singh Rawat* (8) and a recent judgment of a learned Single Judge of this Court in *Kulwant Singh v. Balwinder Kaur and others* (9).

(3) I have gone through the judgments relied upon by the counsel for the petitioner. No doubt, in all those judgments, it was held that there being no provision in the Act, the trial court has no jurisdiction to grant interim maintenance. The observations and conclusions arrived at in one of the judgments relied upon by the counsel for the petitioner deserve to be noticed. In *Gorivelli Appanna's case (supra)*, it was argued on behalf of the husband that the trial court had no jurisdiction to

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- (1) 1998 (2) P.L.R. 515
 - (2) A.I.R. 1998 Bombay 151
 - (3) A.I.R. 1953 Madras 402
 - (4) A.I.R. 1972 A.P. 62 (D.B.)
 - (5) 1977 P.L.R. 506
 - (6) A.I.R. 1977 Orissa 96 (D.B.)
 - (7) 1991 (2) P.L.R. 324
 - (8) A.I.R. 1986 S.C. 984
 - (9) 1999 (2) P.L.R. 699

grant interim maintenance in a case in which the very right to maintenance was in contest. It was also argued that neither section 151 of the Code of Civil Procedure nor Section 18 of the Act authorised the award of interim maintenance. On behalf of the wife, on the other hand, it was argued that it is the inherent right of every court, under section 151 of the Code to act on the principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law and that the court may exercise such powers as may be necessary to do the right in the course of the administration of justice. It was further argued that grant of interim maintenance was permitted both by Section 151 of the Code and Section 18 of the Act. The Division Bench of Andhra Pradesh High Court, after elaborately considering the matter, held as under :—

“The inherent powers recognised by Section 151 cannot extend to matters other than procedural. The court cannot resort to the provisions of Section 151 to encroach upon substantive rights of parties or, in an interlocutory application, upon matters which await adjudication in the suit. No order under Section 151, Civil P.C. can be made except ‘in aid of the suit’.”

“Section 18 does not authorise the award of interim maintenance pending decision of suit in which the very claim to maintenance is in contest. The right of the wife to be maintained by the husband should not be confused with the power of the Court to award interim maintenance pending on action for maintenance where such right is in dispute. The court has no power unless statute expressly confers such a power on it.”

(4) As noticed above, almost a similar view has been taken in the other judgments relied upon by the counsel for the petitioner. Notwithstanding the fact that award of interim maintenance during the pendency of the suit has been disapproved in the above judgments, by taking a view with one voice that there being no express provision in the Act empowering the court in that behalf, interim maintenance cannot be granted, a learned Single Judge of this Court in *Kulwant Singh's case (supra)* ventured to disagree with the aforesaid view and awarded interim maintenance after following the principle enunciated by the Supreme Court in *Savitri's case (supra)*, a Division Bench judgment of this Court in *Puran Singh v. Mst. Har Kaur* (10) and another judgment of a learned Single Judge of this Court in *Kanwar Vishwajit Singh v. Smt. Nirmala Kanwar* (11). The observations of

(10) 1970 C.L.J. 648

(11) 1991 (2) P.L.R. 277

the learned Single Judge of this Court, necessary to have a clear answer to the star question arising herein deserve to be noticed with advantage, which read thus :

“It is a settle principle of law that a relief which cannot be granted while passing the final decree cannot be granted by way of interim relief in those proceedings, but converse thereof is not true. Depending on the facts and circumstances of a given case, the Court would grant interim order if such relief can be granted to the applicant upon final determination of the matter in issue. The provisions of Sections 18 and 20 have to be given a wider meaning so as to provide interim maintenance pendente lite by necessary implication. These provisions do not prohibit or exclude on any settled principle the jurisdiction of the Court to entertain and decide an application for interim or maintenance pendente lite. The Court would normally exercise its inherent powers to aid the ends of justice and to achieve the object of legislation. The exception being exercise of such inherent powers, it should not be in conflict with or destroy the intents behind the substantive provisions of the law or Code, which governs and controls the matter under adjudication.”

It was further observed :

“Obligation of the father or husband, as the case may be, to maintain his wife and children specially, who are unable to maintain themselves is a pious obligation founded on morality and law. The language of the provisions of the Act is wide enough to cover obligation to pay interim maintenance. Even otherwise, the stand of a father intending to deny maintenance to his own children on the ground of jurisdiction of the Court to pass such interim order can hardly be appreciated.”

(5) Now adverting to the instant case, there is no dispute about relationship of the petitioner with the respondents as noticed above. The plaintiffs moved application for grant of interim maintenance, *inter alia*, pleading that they had no source of income and were unable to maintain themselves. This allegation was refuted by the present petitioner by filing a reply to the effect that plaintiff No. 1 i.e. the wife of the present petitioner owned huge property worth Rs. 20 lacs at Ludhiana and has also installed hosiery machines there and thus she has been earning a big amount from those sources. It was further stated that the petitioner had been earning only a sum of Rs. 6,000 per month. The court below after taking into consideration the rival contentions

raised by the counsel for the parties and having regard to the facts and circumstances of the case, awarded interim maintenance in the sum of Rs. 300 per month to each of the plaintiffs. I find no illegality or material irregularity in the impugned order so as to warrant interference in the matter of awarding interim maintenance. Now as far as the quantum of interim maintenance is concerned, though this aspect has not been seriously contested before me, yet in the facts and circumstances of this case as emerge from the impugned order, I am of the opinion that there is hardly any scope for pruning any sum awarded as interim maintenance to the plaintiff-respondents and the amount so awarded is quite just and fair.

(6) In view of the above, I find no merit in the revision petition and the same is consequently dismissed.

R.N.R.

Before N.K. Sodhi & N.K. Sud, JJ

NATIONAL INSURANCE COMPANY LTD. AND
ANOTHER,—*Appellants*

versus

BALBIR KAUR AND OTHERS,—*Respondents*

F.A.O. No. 754 of 1999

27th March, 2000

Motor Vehicles Act, 1988—Ss. 149 (2) & 170—Tribunal accepting the claim of the claimants—An insurer can defend the action on any of the grounds mentioned in S. 149 (2) and cannot challenge the award on merits—Right to contest—Insurer may contest the claim on merits under section 170 before the Tribunal with its permission—Insurer failed to make prayer before the Tribunal to contest the claim on merits—It cannot challenge the award on merits under section 170 for the first time before the High Court—Appeal as well as application filed by the insurer challenging the award on merits not maintainable—Appeal dismissed with liberty to the company to challenge the award under Article 227 of the Constitution.

(The New India Assurance Co. Ltd. v. Randhir Singh and others, 1997(1) PLR 532, does not lay down correct law)

Held that, a reading of the provisions of sub Section (2) of Section 149 and S. 170 of the Motor Vehicles Act, 1988 would show that an