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he retired from government service. He claimed the benefits of the promotional post which were denied to him by the State government. He filed a writ petition which was allowed by the Division Bench observing that the status of Headmaster had been conferred on him on 20th January, 1994 when he was promoted. It was observed that "simply because the order could not be communicated to the petitioner well in time to enable him to join the post before his retirement should not in the circumstances deprive him of the benefits of the Headmaster for all intents and purposes. He has to be treated as Headmaster with effect from 24th January, 1994 and retired as such. "It is not clear from the judgment as to whether the petitioner therein was promoted on 20th January, 1994 with 'immediate effect' or with effect from the date he was to assume charge or whether he was promoted simpliciter without stating as to when the order of promotion was to take effect. We sent for the original records of CWP 15236 of 1994 filed by Hawa Singh Deswal and found that the annexures to the writ petition had been destroyed. It could not, therefore, be ascertained as to what was the nature of the order promoting Hawa Singh Deswal. If he had been promoted with immediate effect the view taken by the Division Bench is correct but if the promotion was to take effect from the date he assumed charge of the promotional post then the observations made therein run counter to the law laid down by the Supreme Court in *Dr. Amarjit Singh's* case (supra). We are, therefore, of the view that the judgment of this court in *Hawa Singh Deswal's* case (supra) is of no assistance to the petitioner before us.

(6) In the result, there is no merit in the writ petition and the same stands dismissed with no order as to costs.

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**R.N.R.**

*Before T.H.B. Chalapathi, J*

SUKHMINDER SINGH,—*Petitioner*

*versus*

BALJEET KAUR AND ANOTHER,—*Respondents*

C.R. No. 334 of 1998

4th June, 1999

*Code of Civil Procedure, 1908—S. 115—Hindu Adoption and Maintenance Act, 1956—Ss. 18 & 20—Application filed seeking permission to file suit in forma pauperis for maintenance u/s 18/20 of the Act—Application also filed seeking interim maintenance—*

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*Interim maintenance allowed—Challenge thereto—Held that an order granting maintenance can be passed during the pendency of the application for permission to file the suit as indigent person.*

Held that the plaintiffs filed the suit as indigent persons claiming that they have no means even to pay the court fee. It will take some time for the Court to decide the application. It is not the intention of the Legislature that the plaintiff who filed the suit claiming maintenance should be made to starve during the pendency of the application. The provisions relating to maintenance are benevolent provisions. They have to be interpreted in favour of the beneficiaries. The liability to maintain the wife and children arises because of matrimonial tie and subsistence of the marriage between the parties. If it is held that no maintenance can be granted during the pendency of the application, it will deprive the right to life of the applicant as envisaged by Article 21 of the Constitution of India. I am, therefore, unable to agree with the contention of the learned counsel for the petitioner that no order granting maintenance can be passed during the pendency of the application for permission to file the suit as an indigent person.

(Para 6)

K.S. Chahal, Advocate, *for the Petitioner.*

J.R. Bhardwaj, *for the Respondents.*

### JUDGMENT

*T.H.B. Chalapathi, J*

(1) This revision petition is filed against the order of Additional Civil Judge (Sr. Division), Dhuri granting interim maintenance to the respondents who are the wife and daughter of the petitioner.

(2) The respondents filed the suit in forma pauperis for maintenance under Section 18 and 20 of the Hindu Adoption and Maintenance Act. During the pendency of the application for permission to sue as an indigent person, the respondents filed an application for grant of interim maintenance. The Trial Court granted maintenance to the wife @ Rs. 400 and to the second respondent—daughter of the petitioner @ Rs. 300 per month. Aggrieved by the same, this revision petition has been filed.

(3) The learned Counsel for the petitioner contended that the Court has no power to grant interim maintenance during the pendency of an

application to permit the plaintiffs—applicants to file the suit as an indigent person. In support of his contention, he relied upon the decision of this Court in *Saudagar Singh vs. Smt. Harbhajan Kaur and others*(1) wherein the then Hon'ble Chief Justice of this Court held that the Act does not authorise the passing of any order for the payment of litigation expenses and maintenance allowance pendente lite. The learned Counsel further relied upon the decision of another learned single Judge of this Court in *Dr. Devinder Singh vs. Harminder Kaur*(2) in which it was held that the interim maintenance cannot be granted to the wife while her application to sue her husband, in forma pauperis for maintenance is still pending. He also relied upon a decision of another learned single Judge of this Court in *Makhan Singh vs. Jagdish Kaur and others*(3) wherein it has been held that interim maintenance cannot be granted. I am unable to agree with the above views expressed by Hon'ble the Chief Justice and learned single Judges of this Court. The Calcutta High Court in *Tarini Gupta vs. Gouri Gupta*(4) and in *Nemai Chand vs. Smt. Lila Jain*(5) held that the Court had the power to grant interim maintenance under section 18 of the Act. In *Indra Mal vs. Babu Lal*(6) it was observed that the power to grant maintenance is implicit and ancillary to the power to entertain a suit for maintenance and the court has power to grant interim maintenance under Section 18 of the Act. It has been held by the Karnakta High Court in *K. Shanakare Gowda vs. Smt. S. Bharathi*(7) if there is a general right to claim maintenance under the statute and where the relationship is not disputed, the power to grant interim maintenance flows from the statute itself. It has also been held by the Delhi High Court in *Gian Devi vs. Amar Nath*(8) that where a petition is filed to permit the wife to sue in forma pauperis for maintenance during the pendency of that petition also, interim maintenance can be granted. It is no doubt true that a learned single Judge of this Court in *Makhan Singh vs. Jagdish Kaur and others*(Supra) referred to a decision of the Andhra Pradesh High Court in *Gorevelli Appanna vs. Gorivelli Seethamma*(9) wherein it has been held that section 18 of the Act does not authorise the award of interim maintenance pending decision on the claim to maintenance. That decision of the Andhra Pradesh High Court was dissented by the

- (1) 1977 P.L.R. 506
- (2) A.I.R. 1984 P. & H. 40
- (3) 1992 Civil Court Cases 29
- (4) A.I.R. 1968 Cal. 567
- (5) A.I.R. 1968 Cal. 405
- (6) A.I.R. 1977 Raj. 160
- (7) A.I.R. 1975 Knt. 17
- (8) I.L.R. 1975(1) Delhi 811
- (9) A.I.R. 1972 A.P. 62

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same High Court in *Adigarla Simhachalam vs. Adigarla Pappamma*(10) holding that even during the pendency of the proceedings instituted by the wife under section 24 of the Hindu Marriage Act, she can claim interim maintenance.

(4) A single Judge of this Court in *Sukhdev Singh and others vs. Sham Kaur and another*(11) held that the court can grant interim maintenance during the pendency of the suit under Section 18 of the Act. A Division Bench of this Court in *Puran Singh and others vs. Har Kaur and another*(12) held that it cannot be said that the order of trial court granting maintenance is without jurisdiction. Thus the decision of the Division Bench of this Court is binding on me. Therefore, the decisions rendered by the single Judges of this court in *Dr. Devinder Singh's case* (supra) and *Makhan Singh's case* (supra) are contrary to the decision of the Division Bench of this Court. I am bound by the decision rendered by the Division Bench of this Court.

(5) The next contention of the learned Counsel for the petitioner is that no interim maintenance can be granted during the pendency of the application for permission to file the suit as an indigent person. This can never be disputed nor doubted that once the permission is granted, the filing of the suit will relate back to the date of presentation of the application for permission to file the suit as an indigent person and not on the date when the application is numbered and registered as a suit. In this connection, reference may be made to the decision of the Supreme Court in *Jugal Kishore vs. Dhanno Devi*(13). The doctrine of maintenance to the wife sprang from her matrimonial tie and obligates the husband to maintain his wife during his life time regardless of his possessing any property. Such moral obligation has made a legal liability since it arose under the very nature of relationship that existed between the Hindu male members and dependents. It can be enforced even against the heirs of the Hindu deceased in whose possession the assets of the deceased have been.

(6) The plaintiffs filed the suit as indigent person claiming that they have no means even to pay the court fee. It will take some time for the Court to decide the application. It is not the intention of the Legislation that the plaintiff who filed the suit claiming maintenance should be made to starve during the pendency of the application. The provisions relating to maintenance are benevolent provisions. They have to be interpreted in favour of the beneficiaries. As already

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(10) A.I.R. 1973 A.P. 31

(11) 1972 P.L.R. 850

(12) 1972 C.L.J. 648

(13) A.I.R. 1973 S.C. 2560

observed, the liability to maintain the wife and children arises because of matrimonial tie and subsistence of the marriage between the parties. If it is held that no maintenance can be granted during the pendency of the application, it will deprive the right to life of the applicant as envisaged by Article 21 of the Constitution of India. I am, therefore, unable to agree with the contention of the learned Counsel for the petitioner that no order granting maintenance can be passed during the pendency of the application for permission to file the suit as an indigent person.

(7) In this view of the matter, I do not find any ground warranting interference with the order of the trial court granting interim maintenance to the plaintiff-applicants.

(8) The revision petition, therefore, fails and is accordingly, dismissed.

**R.N.R.**

*Before V.M. Jain, J*

M/S CENTURY PROTEINS LTD.,—*Petitioner*

*versus*

M/S SHAM SUNDER (HARYANA) INDUSTRIES PVT. LTD.,—  
*Respondent*

C.R. No. 1514 of 1998

24th February, 2000

*Code of Civil Procedure, 1908—0.39 Rls. 1 & 2 and S. 10—Tri of the suit stayed u/s 10 CPC—Plaintiff filling application u/o 39 Rls. 1 & 2 CPC—Whether such an application can be entertained by the Court—Held, yes—Stay of the trial of the suit u/s 10 CPC cannot bar the Court from making interlocutory orders.*

Held that the learned District Judge was perfectly justified in holding that he was competent to deal with the application under Order 39 Rules 1 & 2 CPC, in spite of the fact that the trial of the suit had been stayed under Section 10 CPC. Thus, finding no merit in the revision petition, the same is hereby dismissed.

(Para 8)

R.L. Sharma, Advocate, *for the Petitioner.*

R.K. Jain, Advocate, *for the Respondent.*