

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.354 of 2018**

Kalyan Sah, S/o- Late Manohar Sah, R/o Village- Gogari Jamalpur (In front of Dharmashala), P.O.- Jamalpur, P.S.- Gogari, District- Khagaria.

... .. Petitioner/s

Versus

Mosmat Rashmi Priya, W/o- Late Gaurang Kumar, R/o Village- Gogari Jamalpur, (In front of Dharmashala), P.O.- Jamalpur, P.S.- Gogari, District- Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Satyendra Kumar Srivastava, Advocate
For the Respondent/s : Mr. Anil Kumar Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 19-01-2023

This Civil Miscellaneous application has been filed by the petitioner against the order dated 09-01-2018 passed by learned Principal Judge, Family Court, Khagaria in Maintenance Case No. 41 (M)/2017 filed under Section 19 of the Hindu Adoption and Maintenance Act, 1956 wherein and whereby the petitioner has been directed to pay interim maintenance @ Rs. 10,000/- per month to the respondent.

2. The brief fact of this case is that respondent is the widow daughter-in-law of the petitioner who filed the Maintenance Case on 26.05.2017 under Section 19 of the Hindu Adoption and Maintenance Act in the Court of learned Principal Judge, Family Court, Khagaria. The respondent moved an application on 20.11.2017 for allowing interim maintenance to



her in which the impugned order has been passed.

3. Heard learned counsel for the parties and perused the material on record.

4. Learned Counsel for the petitioner has submitted that the respondent has got Rs. 8,57,279/- from two L.I.C. Policies and kept the same herself. She has also filed partition suit bearing Partition Suit No. 65 of 2016 pending in the Court of Sub-Judge, Gogri. He has further submitted that petitioner has neither agricultural land nor is able to do job. Learned counsel for the petitioner has further submitted that the learned Court below has granted the interim maintenance under Section 125 of Cr.P.C. which is not tenable in law in view of the fact that procedure of awarding maintenance under Section 125 Cr.P.C and Section 19 of Hindu Adoption and Maintenance Act are different and the learned Court below failed to appreciate that when there is no petition pending under Section 125 Cr.P.C. then any interim maintenance cannot be granted in other proceeding i.e. pending under Section 19 of Hindu Adoption and Maintenance Act.

5. Learned counsel for the respondent has submitted that respondent after death of her husband previously filed a case as Maintenance Case No. 64 of 2015 against the petitioner



before the learned Principal Judge, Family Court, Khagaria which has been disposed of on 10.02.2017 with liberty for filing a Maintenance Case against father-in-law under Section 19 of Hindu Adoption and Maintenance Act, 1956. Accordingly, the respondent filed Maintenance Case No. 41 (M) / 2017 in which the impugned order has been passed. He has further submitted that petitioner has two Kitha house and a marketing complex and all is on rent and the petitioner is running Rice – Dal shop and have also 25 Bigha agricultural land and having monthly income of Rupees Two Lakhs but petitioner is not paying maintenance to the respondent. Accordingly, the impugned order is not required to be interfered by this Court. However, he has conceded that the learned Court below may have passed the interim maintenance under Section 19 of Hindu Adoption and Maintenance Act not under Section 125 Cr.P.C. He has submitted that mentioning of other Section or provision is not material when the Court has thus jurisdiction to pass the order.

6. The object of Section 19 of the Act is make it clear that the widowed daughter-in-law can claim maintenance from her father-in-law only where she is unable to maintain herself out of her own property or from the estate of her husband, father, mother, son or daughter. It is also provided that the



father-in-law shall be under no obligation to maintain his daughter-in-law except in cases where there is some ancestral property in his possession from which the daughter-in-law has not obtained any share. The obligation of father-in-law shall not be enforced if he has no means to maintain his daughter-in-law from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share and any such obligation cease on the re-marriage of the daughter-in-law. It is settled law that a Court empowered to grant a substantive relief is competent to award it on interim basis as well, even though there is no express provision in the statute to grant it.

7. It is not in dispute that the respondent is widowed daughter-in-law of the petitioner who has filed maintenance petition under Section 19 of Hindu Adoption and Maintenance Act and during the proceeding an application had been filed for interim maintenance therein and the Court below treated the same under Section 125 Cr.P.C.

8. Section 125 of Cr.P.C. deals with an order for maintenance of wife, children and parents. The daughter-in-law cannot claim maintenance under Section 125 Cr.P.C. but she can claim the same under Section 19 of the Hindu Adoption and Maintenance Act. The provision of Section 125 Cr.P.C. in



petition under Section 19 of the Hindu Adoption and Maintenance Act, 1956 cannot be applied. This Court is of the opinion that the family Court was not justified in applying the provisions under Section 125 of Cr.P.C. for interim maintenance in the petition under Section 19 of the Hindu Adoption and Maintenance Act.

9. On the basis of aforesaid discussions, this Civil Revision is allowed and the impugned order dated 09.01.2008 passed by learned Principal Judge, Family Court, Khagaria is hereby set aside.

10. The learned Court below is directed to pass fresh order on the petition of the respondent for interim maintenance in accordance with law and expedite the disposal of the Maintenance Case No. 41 (M)/ 2017, if not disposed of till date.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	NAFR
CAV DATE	10.01.2023
Uploading Date	19.01.2023
Transmission Date	

