

Equivalent citations: I (1992) DMC 72

Bench: V Kokja

Usha Baghel vs Dr. B.B. Singh on 29/8/1991

## JUDGMENT

V.S. Kokja, J.

1. This is an application filed by the wife and daughter of the non-applicant against him challenging the rejection of their application for interim maintenance by the Judicial Magistrate, First Class, Indore. The learned Magistrate has held that there is no case for interim maintenance and rejected their application.

2. Shri S.A. Mev, learned Counsel for the applicants submits that the learned Magistrate did not appreciate the material placed before her for grant of maintenance. Shri S.K. Sharma, learned Counsel for the non-applicant submits that the non-applicant had offered to take into his custody the daughter, who is five years of age and was also willing to take back his wife to his home.

3. I have heard the learned Counsel and have also perused the record. The application was for interim maintenance and was made on the ground that the applicant No. 1 had no independent source of income to maintain herself and applicant No. 2 her daughter. It was also alleged that the non-applicant had an income of Rs. 4000/- per month and could easily offer Rs. 1000/- as maintenance for both the applicants. Neither in the application nor in the affidavit supporting any details about income of the applicant and her source of maintenance at present were given. In reply the non-applicant had stated that the applicant No. 1 is earning by giving tuitions and by doing stitching and knitting work. He has also offered to take the daughter applicant no 2 in his custody and to maintain her without any conditions. It has also been alleged that the applicant No. 1 is engaged in a business with the help of her brothers by borrowing a loan from a Nationalised Bank. It has further been alleged in the reply that the non-applicant's income was Rs. 1800/- per month and not Rs. 4000/- as alleged by the applicant No. 1. The application is supported by affidavit as also a certificate of income of the non-applicant from the Principal, Government Science College, Pandurna.

4. While deciding an application for interim maintenance, the main consideration would be the immediate need of the applicant and proved income of the non-applicant. The justification for living separately would be a matter of merit, which has to be considered after the evidence is recorded. From the material on record, it is clear that there is no case for grant of interim maintenance for applicant No. 2, the daughter, who is admittedly of more than five years of age, because the non-applicant father is ready to take her in custody and to maintain her. There is, therefore, no error in not granting the interim maintenance in respect of the daughter as far as the applicant No. 1 wife is concerned, she has made a vague and general statement about her income and she has not controverted the allegations made in the reply that she was engaged in a business along with her brothers and has borrowed a loan from a Nationalised Bank. The statement of the non-applicant as regards his income being only Rs. 1800/- per month has also not been controverted. In the circumstances of the case, therefore, there was no scope for grant of any interim maintenance to the applicants. It is true that the learned Magistrate has not discussed all the material before her but in any case the conclusion reached by her is supported by material on record. No case is, therefore, made out for grant of interim maintenance. The observations made in this case are purely on the basis of material at present on record and should not affect the consideration of the case on merits while deciding the main application on merits.

5. For the aforesaid reasons, the revision application is rejected.