

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No. 75 of 2010

Km. Kavita Bishwas,
D/o Mahanand Bishwas,
R/o Tagore Nagar, P.S. Sitarganj,
District Udham Singh Nagar.Appellant.

Versus

Mahanand Bishwas
S/o Ramcharan Bishwas,
Retd. Block Development Officer,
R/o (C/o Smt. Rakhi @ Ram Beti),
Bilsa Mohalla No.1,
District Badaun (U.P.)Respondent

Mr. K.S. Bora, Advocate present for the appellant,
Mr. Manoj Mohan, Advocate present for the respondent.

Dated: March 31, 2011

**Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble V.K. Bist, J.**

Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 19 of the Family Courts Act, 1984, is directed against the order dated 7th October, 2010 passed by Judge, Family Court, Nainital in Suit No. 110 of 2007, whereby said Court has directed the respondent to pay ₹ 2,000/- per month as an enhanced sum of maintenance to his daughter (present appellant).

2. This appeal has been filed by the daughter for further enhancement.

3. Heard learned counsel for the parties and perused the Lower Court's Record.

4. Admittedly, the appellant is daughter of the respondent, who lives separately with her mother. It is also not disputed that apart from the appellant, there are other two children of the respondent, one of whom is a married daughter and another is a married son. The record shows that Smt. Rekha Rani (mother of the present appellant, and wife of the respondent) filed separate application for maintenance and she is already getting ₹ 5,000/- per month from the present respondent. It is also apparent from the record that the present appellant initially got an order from the trial Court that she be paid ₹ 300/- per month. Said order, which was passed in the year 1994, was modified in the year 2001 when on the application of the appellant, the amount of maintenance enhanced to ₹ 800/- per month. In the year 2007, the suit in question was filed by the present appellant for further enhancement, on which the trial Court vide impugned order dated 07.10.2010 enhanced the sum of maintenance to ₹ 2,000/- per month from the date of order.

5. The argument advanced on behalf of the appellant is of two fold. First, since the appellant is suffering intestinal disease for which she had already undergone six surgical operations and two more operations are yet to be got done, as such, she needs more maintenance. Second leg of the argument of the learned counsel for the appellant is this that the trial Court has erred in law by not enhancing the amount from the date of application, filed before it.

6. In reply to this, Shri Manoj Mohan, the learned counsel for the respondent submitted that after

filing of the suit, now the respondent has retired from his service and, as such, his earning has gone down. In the circumstances, it is contended that he cannot be compelled to pay further enhanced sum.

7. We have considered the submissions of the learned counsel for the parties and perused the Lower Court's Record. Most of the facts of this case are admitted and undisputed. Appellant is daughter of the respondent. She is unmarried major daughter. She is suffering from some intestinal disease. It is also not disputed that initial amount of maintenance was ₹ 300/- per month, which was directed to be paid in the year 1994. Thereafter, the maintenance was enhanced, on the application of the appellant, to the tune of ₹ 800/- per month in the year 2001. Again, in the year 2007, appellant filed a suit under Section 20 read with Section 25 of The Hindu Adoptions and Maintenance Act, 1956 for enhancement of the maintenance amount on which, after recording evidence of the parties, the trial Court enhanced sum of maintenance to ₹ 2,000/- per month. It has come on the record that the monthly earning of the respondent was ₹ 22,000/- per month. However, meanwhile (after filing of the suit) he is said to have been retired from service, as such, his earning has substantially gone down.

8. In the above circumstances, we do not find any case for further enhancement from ₹ 2,000/- per month, enhanced by the trial Court. However, as far as entitlement of maintenance from the date of application is concerned, we do find force in the contention of learned counsel for the appellant. We are of the view that the appellant should have been awarded enhanced

maintenance from the date of filing of the suit in the year 2007.

9. Accordingly, this appeal is disposed of with the direction that the respondent shall pay maintenance at the enhanced rate of ₹ 2,000/- per month with effect from 28.09.2007, and not from the date of order passed by the trial Court in the year 2010.

10. No order as to costs.

11. Interim Relief Application (CLMA no. 9942 of 2010) also stands disposed of.

(V.K. Bist, J.) (Prafulla C. Pant, J.)
31.03.2011

NCM: