

Chhattisgarh High Court
Suresh Tiwari vs Sadhna Tiwari on 9 September, 2021

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FAM No.91 of 2016

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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 05-04-2021

Judgment delivered on 09-09-2021

FAM No. 91 of 2016

[Arising out of judgment and decree dated 25-2-2016 passed by the Judge, Family Court, Rajnandgaon, in civil suit No.143-A/2013]

1. Suresh Tiwari S/o Shri Salikram Tiwari, Aged About 52 Years R/o Radha Krishna Ward, Kawardha, Police Station, Tahsil And District Kabirdham, Chhattisgarh, Civil And Revenue District Kabirdham, Chhattisgarh

---- Appellant

Versus

1. Sadhna Tiwari D/o Late Sanat Kumar Mishra, Aged About 49 Years
2. Shaifali Alias Pragati Tiwari Aged About 18 Years

Both R/o Brahmanpara, Rajnandgaon, Tahsil And District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant Shri Sandeep Shrivastava and Shri Akash Agrawal, Advocates

For Respondents Shri Abhishek Sharma, Advocate

Hon'ble Shri Prashant Kumar Mishra, Ag. CJ.
Hon'ble Shri N.K. Chandravanshi, J.

CAV Judgment The following judgment of the Court is delivered by Prashant Kumar Mishra, Acting Chief Justice.

1. In this appeal under [Section 19](#) of the Family Courts Act, 1984 the appellant-Suresh Tiwari has called in question the order passed by FAM No.91 of 2016 the Family Court, Rajnandgaon, deciding the respondents' application under [Section 25 \(2\)](#) of the [Hindu Marriage Act, 1955](#) (for brevity 'the Act, 1955') enhancing the maintenance amount from Rs.1,000/- to Rs.1,700/- per month for respondent No.1- Sadhna Tiwari and from Rs.250/- to Rs.750/- per month in respect of respondent No.2-Shaifali @ Pragati Tiwari.

2. There is no dispute between the appellant and the respondent No.1 that their marriage solemnised in the year 1991 has been dissolved by compromise entered before the Lok Adalat on 3-3-2002. While passing the compromise decree, the appellant agreed to pay Rs.1,000/- per month to respondent No.1 and Rs.250/- per month to each of their children namely; Sourabh and Shaifali (Manisha) till they attain the age of majority. The appellant also agreed to make fixed deposit of Rs.50,000/- in the name of his daughter Shaifali (Manisha) for the expenditure in her marriage. The respondent No.1 agreed to withdraw the proceedings under [Section 125](#) of the Cr.P.C. and shall facilitate closure of the criminal case for offence under [Section 498-A](#) of the IPC.

3. When the matter stood compromise in the above stated terms on 3-3-2002 the respondents preferred the subject application under [Section 25\(2\)](#) of the Act, 1955 seeking enhancement of the amount of maintenance and the same has been allowed by the Family Court.

4. Shri Sandeep Shrivastava, learned counsel for the appellant, would refer to the decisions rendered by the Hon'ble Supreme Court in State of Punjab and Another v Jalour Singh and Others 1, Bar Council of India v Union of India² and Bhargavi Constructions and Another v Kothakapu Muthyam Reddy and Others³ to argue that the award passed by the Lok Adalat being final and not appealable it was not open for the respondents to have moved the 1 (2008) 2 SCC 660 2 (2012) 8 SCC 243 3 (2018) 13 SCC 480 FAM No.91 of 2016 application under [Section 25\(2\)](#) of the Act, 1955 nor was it open for the Family Court to have modified the award passed by the Lok Adalat.

5. Shri Abhishek Sharma, learned counsel appearing for the respondents, per contra, would submit that the respondents have not called in question the award passed by the Lok Adalat, therefore, the application moved by the respondents under [Section 25 \(2\)](#) of the Act, 1955 is maintainable.

6. The Hon'ble Supreme Court in the matter of Bhargavi Constructions (supra), has held that an award made by the Lok Adalat in terms of a settlement arrived at between the parties is final and binding on the parties to the settlement. Any challenge to such an award based on settlement can be done only by filing a petition under [Article 226](#) and/or [Article 227](#) of the Constitution of India, that too on very limited grounds.

7. [Section 25](#) of the Act, 1955 makes a provision regarding permanent alimony and maintenance. The same is reproduced hereunder for ready reference :

25 Permanent alimony and maintenance.-- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

FAM No.91 of 2016 (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under

sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

8. The above quoted provision contained in [Section 25](#) itself provides that power under [Section 25\(1\)](#) is to be exercised by the Court at the first instance and when there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

9. The award passed by the Lok Adalat, while deciding the quantum of monthly maintenance payable by the appellant to the respondents was in exercise of power under [Section 25\(1\)](#), therefore, since the amount of maintenance is controlled by the provision under sub-section (2) it entitles the wife to apply for modification/enhancement of the amount. While making such application the wife or the children have not challenged the award, therefore, the present is not a case where the application would be barred in view of the law laid down by the Hon'ble Supreme Court in the matter of Bhargavi Constructions (supra).

10. When the law itself entitles a party to take appropriate steps in the changed circumstances, exercise of such entitlement would not be FAM No.91 of 2016 negated only for the reason that under [Section 25](#) of the Act, 1955 the award was passed by the Lok Adalat.

11. Since focus of the argument raised by the learned counsel for the appellant revolved around question dealt with in the preceding paragraphs, we have not considered the merits of the decision of fixation of monthly maintenance amount in favour of both the respondents i.e. Rs.1700/- and Rs.750/-, respectively. However, even if that is examined on merits, considering the current price index the same is not on higher side.

12. In the result, the present appeal, being bereft of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

13. A decree be drawn accordingly.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(N.K. Chandravanshi)
Judge

Gowri

HEAD NOTE

Maintenance u/S 25 of HM Act fixed by the Lok Adalat. It can be varied, modified or rescind by the Family Court u/S 25 (2) and the same would not amount to challenging the award passed by the Lok Adalat.