

**(2012) 10 P&H CK 0195**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 3142 of 2010

Mukesh Kumar Aggarwal

APPELLANT

Vs

Samriti @ Meeshu and Another

RESPONDENT

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**Date of Decision:** Oct. 4, 2012

**Acts Referred:**

- Hindu Adoptions and Maintenance Act, 1956 - Section 20(2), 20(3), 21, 22, 25

**Citation:** (2012) 168 PLR 791

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Amit Chopra and Ms. Maninder, for the Appellant; C.L. Goyal, for the Respondent

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**Judgement**

L.N. Mittal, J.

Along with this appeal filed by Mukesh Kumar Aggarwal, cross-objections filed in the appeal by respondents i.e. appellant's daughter and her mother shall also stand disposed of. Smriti @ Mishu-respondent No. 1 herein, then a minor, earlier filed suit through her mother Meenakshi Aggarwal-respondent No. 2 herein as next friend against the minor's father Mukesh Kumar Aggarwal appellant herein seeking maintenance.

2. Learned trial Court vide judgment and decree dated 21.05.1997 directed both parents of the minor to pay Rs. 2,000/- per month from the date of registration of the suit i.e. 13.09.1996 as maintenance to be shared equally by both the parents. In first appeal; lower appellate Court vide judgment and decree dated 16.10.2001 enhanced the maintenance amount to Rs. 5,000/- per month from the date of said judgment and decree to be shared equally by both the parents. Respondent No. 1 herein has filed RSA No. 4816 of 2001 for further enhancement of the maintenance amount. The said second appeal shall also stand disposed of by this common judgment. The said appeal has been admitted to consider following substantial

questions of law:

1. Whether the plaintiff-appellant is entitled to the grant of maintenance till she gets married, as required u/s 21 of the Hindu Adoption and Maintenance Act, 1956?
2. Whether the mother and the father were obliged to give maintenance amount to the plaintiff proportionate to their income?
3. Respondent No. 1 herein filed petition u/s 25 of the Hindu Adoptions and Maintenance Act, 1956 (in short, "the Act") on 23.11.2001 for enhancement of maintenance allowance on account of change of circumstances, giving rise to instant RSA No. 3142 of 2010.
4. Learned trial court vide order dated 19.10.2006 Annexure P-2 enhanced the maintenance to Rs. 8,400 per month from the date of filing of petition till the daughter attained the age of majority or till she got married whichever is earlier and the amount is to be shared equally by both the parents. There were two first appeals against aforesaid order of the trial Court, one appeal preferred by the father and the second appeal preferred jointly by the daughter and her mother. Both the first appeals have been dismissed by the lower appellate Court vide common judgment dated 15.03.2010.
5. Feeling aggrieved, father Mukesh Kumar Aggarwal has filed this second appeal whereas the daughter and her mother have filed cross-objections.
6. I have heard learned counsel for the parties and perused the case file.
7. Firstly taking up the substantial questions of law framed in RSA No. 4816 of 2001.
8. As regards substantial question No. 1 mentioned above, Section 21 of the Act is not attracted because it applies to dependants of a deceased Hindu who are entitled to maintenance out of estate of the deceased Hindu u/s 22 of the Act. However, u/s 20(2) of the Act, every minor child, legitimate or illegitimate, can claim maintenance from his or her father or mother so long as the child is minor. Further, according to Section 20(3) of the Act, the obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends so far as the parent or unmarried daughter is unable to maintain himself or herself. Reading both these provisions together, it emerges that a male child is entitled to maintenance till attaining the age of majority whereas female child is entitled to maintenance till attaining the age of majority or till getting married whichever is later. Substantial question of law No. 1 mentioned as above is answered accordingly.
9. Coming to substantial question of law No. 2 framed as above, counsel for respondents has relied on judgment of Hon"ble Supreme Court namely [Padmja Sharma Vs. Ratan Lal Sharma](#), laying down that both parents of a child are liable to contribute to maintenance of the child in proportionate of their salaries (income). Consequently substantial question of law No. 2 framed herein is answered holding

that both the parents are obliged to give maintenance in proportion to their income.

10. Now coming to the amount of maintenance in the instant case.

Gross salary of the father as per salary certificate of March, 2002 was Rs. 22,487/- per month. The trial Court has, however, assessed income of the father to be Rs. 30,000/- per month at the time of filing of the instant petition in the trial court. In this regard, the trial Court has taken into consideration reimbursement of medical expenses and conveyance expenses of the father. The same could not be taken into consideration to determine the income of the father for the purpose of determining the quantum of maintenance payable to the daughter. On the contrary, out of the aforesaid gross salary, the father had to pay income tax also. Consequently income of the father is determined to be Rs. 20,000/- at the time of filing of the petition. Income of the mother has been determined to be Rs. 12,000/- per month approximately. The same is not in dispute.

11. In the aforesaid circumstances, the gross amount of maintenance of Rs. 8,400/- per month as determined by the Courts below seems to be appropriate keeping in view the income of both the parents, but the said amount is not to be shared equally by both the parents and has to be shared proportionately to their income. Accordingly the share of the father would come to Rs. 5,250/- per month whereas share of the mother would be Rs. 3,150/- per month. The said amount of maintenance shall be payable from the date of filing of the petition u/s 25 of the Act till the daughter attains the age of majority or till she gets married whichever is later. Since maintenance allowance has been enhanced w.e.f. 23.11.2001, the date of filing of petition u/s 25 of the Act, no further enhancement is required in RSA No. 4816 of 2001.

12. Accordingly RSA No. 4816 of 2001 is dismissed whereas RSA No. 3142 of 2010 and cross-objections No. 3-C of 2011 stand disposed of in the above terms i.e. appellant-father is to pay Rs. 5250/- per month and respondent No. 2-mother is to pay Rs. 3150/- per month as maintenance to respondent No. 1 w.e.f. 23.11.2001 till she gets married (because respondent No. 1 has already become major on 23.01.2012 and is still unmarried as submitted by counsel for the parties). Nothing in this judgment shall have any bearing on merits of another petition said to have been filed by respondent No. 1 for further enhancement of the maintenance amount on further change of circumstances.