(1997) 5 ALD 450 : (1997) 3 APLJ 395 : (1998) 1 DMC 313

Andhra Pradesh High Court

Case No: Writ Petition (SR) No. 95636 of 1997

C. Azaraiah		APPELLANT
	Vs	
The Judge, Family Courts and Others		RESPONDENT

Date of Decision: Aug. 18, 1997

Acts Referred:
Constitution of India, 1950 â€" Article 226#Family Courts Act, 1984 â€" Section 7, 7(1)

Citation: (1997) 5 ALD 450 : (1997) 3 APLJ 395 : (1998) 1 DMC 313

Hon'ble Judges: S. Parvatha Rao, J; Ramesh Madhav Bapat, J

Bench: Division Bench

Advocate: P.S. Murthy, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

S. Parvatha Rao, J.
The petitioner in this writ petition seeks a writ of mandamus declaring that the Family Court, Secunderabad, has no

jurisdiction to entertain the suit on its file - numbered as O.S. No. 12 of 1997, fend an interlocutory application therein numbered as I.A. No. 293

of 1997. Office had raised an objection that the writ petition was not maintainable. The learned Counsel for the petitioner replied stating that the

Family Court passed an order in the said I.A., without any written statement being filed in the said suit and ""started chief-examination"" and, hence,

the writ petition was maintainable under Article 226 of the Constitution of India.

2. The learned Counsel submits before us that the contention being advanced in me writ petition is that the said suit was not maintainable because it

is beyond the jurisdiction conferred by Section 7 of the Family Courts Act, 1984 (""the Act"" for short) on the Family Courts.

3. In the circumstances, we are of the view that the writ petition is maintainable because the question is whether the said suit entertained "by the

Family Court, Secunderabad was within the jurisdiction conferred on the Family Court u/s 7 of the Act. Office is, therefore, directed to number

this writ petition.

4. The learned Counsel for the petitioner wants us to go into the question as to whether the Family Court exceeded its jurisdiction conferred on it

u/s 7 of the Act. We will first record the bare facts necessary for appreciating the contention raised. A copy of the petition (plaint) in O.S. No. 12

of 1997 before the Family Court, Secunderabad is before us as a material paper. The 2nd and 3rd respondents before us in this writ petition are

the petitioners (plaintiffs) in that suit. The petitioner before us is the sole respondent (defendant) in that suit. We will hereinafter refer to them as

arrayed-in the present writ petition.

5. The petitioner herein is the husband of the 2nd respondent and father of the 3rd respondent. The learned Counsel for the petitioner does not

dispute their relationship. He also does not dispute that the relationship between them still subsists. It is also not in dispute that respondents 2 and 3

are living separate from the petitioner. The relief sought in the said suit are as follows :

(a) To pay a sum of Rs. 1,80,000/- (Rupees one lakh eighty thousand only) by way of arrears of maintenance for the period from 1.11.1993 to

31.10.1996.

(b) To pay a future maintenance at the rate of Rs. 3,500/- to me per month and Rs. 1,500/- to our daughter per month totalling to Rs. 5,000/- per

month from this day.

(c) To direct the respondent to obtain and give us 3 Railway (1st Class) passes and 9 P.T.Os. to the places of our choice.

(d) To direct the respondent to get the medical treatment facility provided to me alongwith other benefits.

(e) To pay the costs of the petition.

(f) Pass such other and further orders as the Hon''ble Court deems fit and proper in the circumstances of the case.

In essence therefore, it is not disputed by the learned Counsel for the petitioner before us, the reliefs claimed by respondents 2 and 3 before the

Family Court in O.S. No. 12 of 1997 are for past maintenance for three years and for future maintenance. The petitioner state that he was a

servant in the Railways and that he retired on 31.7.1997. Under the circumstances, reliefs (c) and (d) sought by respondents 2 and 3 may hot

survive. Another fact we have to note is that pending O.S. No. 12 of 1997, respondents 2 and 3 also preferred I.A. No. 293 of 1997 for grant of

ad interim injunction ""from releasing the settlement and pension of respondent - C. Azaraiah (petitioner herein) addressed to the Divisional

Manager, South Central Railway, Hubli Division, Hubli pending the disposal of the main suit and pass such other order or orders as the Hon''ble

Court deems fit and proper"". The learned Counsel for the petitioner before us also contends that the Family Court has no jurisdiction to grant an

injunction of this nature.

6. As the contention advanced by the learned Counsel for the petitioner turns on the scope and ambit of Section 7 of the Act, it is necessary to

examine the same. Section 7 of the Act reads as follows :

Section 7. Jurisdiction-(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by a District Court or any Subordinate Civil Court under any law for the time being in force in

respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such Subordinate

Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely :

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the

case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor;

(2) xxx xxx."" .

A mere reading of this provision would show that a suit or proceeding for maintenance is maintainable before the Family Court and that Court has

jurisdiction to entertain the same. Clause (a) of Sub-section (1) of Section 7 of the Act further clarifies that in dealing with such a suit for

maintenance, the Family Court would have and could exercise all the jurisdiction exercisable by a Civil Court under any law for the time being in

force. The learned Counsel for the petitioner accepts mat a suit for past maintenance and future maintenance can be entertained by a Civil Court

and he. also accepts that suitable injunctions can be given by way of interlocutory orders in such suits; but he submits mat the expression

"maintenance" in Clause (f) of Sub-section (1) of Section 7 does not take in past maintenance because the expression used is only "maintenance".

We find mat this submission is frivolous, to say the least: equally, the learned Counsel perhaps would contend that it cannot deal with future

maintenance because the expression "future" was not used, and also present maintenance because the expression "present" was not used. We do

not see why me expression "maintenance" in its plain meaning cannot comprehend past, present and future maintenance, keeping in view that it

occurs in a provision conferring jurisdiction and in the absence of any qualifying expression limiting its connotation we do not see anything in the

context to limit the amplitude of the expression "maintenance" so as to exclude past maintenance from its scope. A suit or proceeding for

maintenance in a Civil Court can include also a claim for past maintenance. There can be no good reason to exclude such a claim in respect of suits

for maintenance contemplated u/s 7 of the Act,

7. We, therefore, find that the Family Court, Secunderabad has jurisdiction to entertain O.S. No. 12 of 1997 and it also has the incidental powers

to entertain and dispose of applications for interlocutory orders in view of Clause (a) of Sub-section (1) of Section 7 of the Act.

8. In the result, the writ petition is dismissed. We make it clear that we do not purport to say anything on the merits of the matters before the

Family Court. It will be open to the petitioner before us to question on merits any order made by the Family Court in appropriate proceedings in

accordance with law.