

ORDER BELOW EXH.NO.5 IN PWDVA APPEAL NO.31/2024
(Rajaram Shankar Channe Vs. Swati Prakash Channe etc.,)
(CNR No.MHSN0170006072024)

1. This is an application for staying effect and operation of impugned order passed by Ld. JMFC, Kadegaon in Cri. M.A. No.108/2023 dt. 22.04.2024 directing appellants No.1 and 2 to pay maintenance of Rs.3,000/- per month to respondents No.1 to 3 collectively.

2. Ld. Counsel Shri A.U. Shete for the appellants submitted that respondent No.1 is wife of the deceased son of appellants No.1 and 2 and respondents No.2 and 3 are children of respondent No.1. He read out para 6 in reply filed before Ld. JMFC in the said proceeding to the application for interim relief and submitted that the appellants are having land area 01 R and this area is too small to cultivate anything being less than 1 Gunta. He also read out para 13 of the impugned order to state that Ld. Trial Court assumed that the appellants are earning from agricultural land. He further read out operative part of the order in MACP No.48/2016 as per which the appellants received compensation amount of Rs.2,00,000/- only and remaining compensation amount of Rs.12,40,690/- is paid to the respondents. According to him, the respondents received substantial amount. He further referred section 19 in the Hindu Maintenance and Adoption Act, 1956 and submitted that the appellants are the last persons who have to maintain their widowed daughter-in-law subject to satisfaction of requirements in section 19. He further relied upon two citations i.e. **Kalyan**

Sah Vs. Mosmat Rashmi Priya (Civ.Misc.Jurisdiction No.354 of 2018 decided on 19.01.2023) and Abdul Khader Vs.Tasleem Jamela Agadi (RPFC No.100026 of 2022 decided on 21.02.2024) in support of his submissions. By pointing out these aspects, he prayed for allowing application Exh.5.

3. Considering material on record, it appears that both appellants are old aged persons having average age of 70 years. Furthermore, they are having 01 R land which is not sufficient piece of land to fetch any earning therefrom. In such circumstances, the appellants are not able to maintain themselves. Even then, Ld. Trial Court imposed responsibility of maintaining the respondents upon their shoulder. Though there is no reference of section 19 of the Hindu Maintenance and Adoption Act, 1956 in the D.V. Act, the said provision cannot be read to have been rendered redundant by virtue of the provisions of the D.V. Act. It is pertinent to note that section 36 of the D.V. Act specifically provides that provisions of the D.V. Act are in addition to and not in derogation of the provisions of any other law, for the time being in force. Even if this legal aspect is kept open for consideration while deciding appeal on merit, liability of paying maintenance upon shoulder of the appellants cannot be continued at least till decision in present appeal on merit. Hence, I pass the following order:-

ORDER

1. Application Exh.5 is allowed.

2. The effect and operation of order below Exh.5 dt.22.04.2024 in Cri. M.A. No.108/2023 passed by Ld. JMFC, Kadegaon is stayed till decision of the present appeal on merit.

Vita
dt.12.07.2024

(R.R.Bhagwat)
Additional Sessions Judge, Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F. file, are same word to word, as per the original order.

Name of Stenographer	: S.V.Agnihotri (Steno Grade-I)
Court	: DJ-1 & Addl. Sessions Judge, Vita
Date of order	: 12.07.2024
Signed by Presiding officer on	: 12.07.2024
Uploaded on	: 12.07.2024

