

**Ajay Kumar vs Lata@ Sharuti**

**2019 SCC OnLine SC 726**

**HEADNOTE:** Maintenance can be directed against brother in law (Devar or Jeith) towards his bhabi and nephew (Deceased brother's wife and her child) in case brother in law is carrying on joint family business.

**Brief Facts:**

The present appeal arises from a judgment of a learned Single Judge of the High Court of Punjab and Haryana in which the Hon'ble High Court dismissed a petition against the judgment of the Additional Sessions Judge, Panipat confirming an interim order for the award of maintenance to the first respondent and her minor child under the provisions of the Act 2005.

The respondent alleged that after her marriage, the complainant and her spouse resided at a house which constitutes ancestral Hindu Joint Family Property. She and her husband resided on the ground floor of the residential accommodation. The appellant and the deceased spouse of the first respondent jointly carried on a business of a kiriyana store at Panipat from which, it has been alleged, each had an income of about Rs 30,000 per month. After the death of her husband, the respondent was pregnant and that she gave birth to a child on 31 January 2013. The travails of the respondent are alleged to have commenced after the death of her spouse and she was not permitted to reside in her matrimonial home.

The learned Trial Judge granted monthly maintenance to her and to the child born out of the said wedlock. The award of maintenance was directed against the appellant/ brother in law who was carrying on the above

business together with the deceased spouse of the respondent. This order of the JMFC was confirmed by the Additional Sessions Judge. The High Court, in a petition filed by the appellant, affirmed the view. Hence these proceedings came to be instituted under Article 136 of the Constitution of India.

The submission of appellant was that there was no basis under the provisions of the Act to fasten liability on the appellant/the brother of the deceased spouse of the respondent.

**Observations of the Hon'ble Apex Court:**

- Referring to section 2(f), 2(q), 2(s), 12 and 20 of the Act, it observed that all these definitions indicate the width and amplitude of the intent of Parliament in creating both an obligation and a remedy in the terms of the enactment.
- At this stage, there are sufficient averments in the complaint to sustain the order for the award of interim maintenance. Paragraph 10 of the complaint prima facie indicates that the case of the complainants is that the house where the first respondent and her spouse resided, belong to a joint family.
- The appellant and his brother (who was the spouse of the first respondent and father of the second respondent) carried on a joint business. The appellant resided in the same household.
- Ultimately, whether the requirements of Section 2(f); Section 2(q); and Section 2(s) are fulfilled is a matter of evidence which will be adjudicated upon at the trial.

- At this stage, for the purpose of an interim order for maintenance, there was material which justifies the issuance of a direction in regard to the payment of maintenance.
- However, the Hon'ble court clarified that the present order as well as orders which have been passed by the courts below shall not come in the way of a final adjudication on the merits of the complaint in accordance with law.
- The arrears were directed to be paid over within a period of four months by equal monthly installments.
- The Appeal thus was accordingly, disposed of.