

Mrs. L. Hilt Vs. V. Hilt

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Court : Allahabad

Decided On : Sep-04-1942

Reported in : AIR1943All8

Appellant : Mrs. L. Hilt

Respondent : V. Hilt

Judgement :

ORDER

Collister, J.

1. In 1934 the applicant was directed by this Court to pay maintenance at the rate of Rs. 35 per mensem for his minor daughter Charlotte Hilt. He has apparently been paying this sum regularly upto date ; but he now applies for an order permitting him to stop such payment for the reason that his daughter is no longer a 'minor child' within the meaning of Section 44, Divorce Act. There is also a prayer in the application that such money as has been deposited by him in Court and is still unpaid be refunded to the applicant; but his learned Counsel, does not press this prayer. The opposite party, Charlotte Hilt, has put in an affidavit in which she admits that she reached the age of majority--by which she means the age of 18--on 22nd February of this year and she also admits that 'strictly speaking' she is not legally entitled to any further maintenance after 13th August 1942, on which date this application was preferred by her father. But she says that she is undergoing a

course of commercial training in the Girls' High School at Allahabad, which will ordinarily continue until the end of the year, and she prays that in the exercise of its discretion under Section 44 of the Act this Court may direct the applicant to continue paying her maintenance upto 31st December of this year ; otherwise she will be unable to finish her course of training. Her learned Counsel contends that this Court has a wide discretion; and in support of this contention he has referred to *Thomasset v. Thomasset* (1894) L.R. 1894 P. 295. That decision is authority for holding that in England a Court can direct the payment of maintenance to a minor boy who is over 16 years of age and to a minor girl who is over 14 years of age when they have not reached the age of 21. But in Section 3(5), Indian Divorce Act, the expression 'minor children'--which occurs in Section 44--is defined as sons of Indian fathers who have not completed the age of 16 and daughters of Indian fathers who have not completed the age of 13, while in all other cases it means unmarried children who have not completed the age of 18 years.

2. As I have said, learned Counsel for the opposite party invokes the exercise of my discretion. But the only discretion allowed under Section 44 is in the matter of granting maintenance for minor children there is no discretion as regards maintenance for children who have ceased to be minor children under the definition contained in Section 3(5) of the Act. The English law cannot be invoked to widen the discretion of the Courts in India. It was held in *Iswarayya v. Iswarayya* ('30) 17 A.I.R 1930 Mad. 154, that there is no power under the Act to make any provision for children who are no longer minor under the Act; and if I may respectfully say so, this view is clearly right. If it were in my power to do so, I should willingly allow the respondent to receive maintenance upto the end of the year, but for reasons which I have given I am of opinion that this Court is not competent to pass any such order. I accordingly allow this application with costs and direct that this Court's order for payment of maintenance shall cease to have effect from the date of this application. The money which is lying in deposit in this Court will be paid to the opposite party.