

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 252 of 2016

1. T. Nagbhushan Rao S/o Shri T. Ramarao, Aged About 51 Years R/o C.B.-1/ G. Camp-1, Near Patel Dairy, Bhilai, District Durg, Chhattisgarh(Defendant)

---- Appellants

(Defendant)

Versus

1. Smt. T. Malti Rao W/o Shri Nagbhushan Rao, Aged About 45 Years
2. T. Homeshwar Rao S/o Shri T. Nagbhushan Rao, Aged About 9 Years Minor Through Natural Guardian Mother Smt. T. Malti Rao (Applicant No.1)

Both are R/o Ward No.8 Sarovar Marg, Bangali Basti Manendragarh, District Korea, Chhattisgarh(Plaintiffs)

---- Respondents

(Plaintiffs)

For Appellant : Shri Jitendra Gupta, Advocate.
For Respondents : None.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board by Justice Pritinker Diwaker

22/12/2016

Heard on IA No.01, application for condonation of delay in filing the appeal.

02. For the reasons mentioned in the application, the same is allowed and delay in filing the appeal is condoned.

03. Also heard on admission.

04. The respondents, wife and son of the appellant, filed an application before the Family Court under Section 18 and 20 of Hindu Adoption and Maintenance Act. Alongwith the said application, they also filed an application under Order 39 Rule 1 & 2 of CPC praying that after retirement, the appellant is going to receive huge amount and as he is not maintaining the respondents, the employer of the appellant may be directed not to release any retiral dues in favour of the appellant. However, by the impugned order the Family Court has directed that if the appellant furnishes bank guarantee of Rs.10 lacs before his employer, then the employer shall release the entire retiral dues in favour of the appellant or in the alternative, the employer to pay the retiral benefits by withholding the amount of Rs.10 lacs. It is this order which has been assailed in the present appeal.

05. Counsel for the appellant submits that the respondents are in a position to maintain themselves, the appellant does not keep good health and therefore, he is in dire need of his entire retiral dues. He submits that the Court below has erred in law in not deciding the application as filed by the appellant under Order 7 Rule 11 of CPC and deciding the application as filed by the respondents under Order 39 Rule 1 & 2 of CPC.

06. I have heard counsel for the appellant and perused the material on record.

07. From perusal of the impugned order it reveals that the Family Court while passing the impugned order has taken into account all the relevant aspects i.e. prima facie case, balance of convenience and

possibility of causing irreparable loss to the respondents and also kept in mind the fact that if release of entire retiral dues of the appellant is stopped, the appellant shall suffer great hardships as well. Thus, considering the facts and circumstances of the case, the Court below was justified in passing the impugned order directing the employer of the appellant to release the entire retiral dues in favour of the appellant in case he furnishes bank guarantee of Rs.10 lacs or in case of non-furnishing of such bank guarantee, to release the retiral benefits by withholding the amount of Rs.10 lacs. This Court finds no illegality or perversity in the order impugned warranting interference. Accordingly, the appeal being without any substance is liable to be dismissed at the admission stage itself and is dismissed as such.

The Family Court is, however, directed to decide all the pending applications and the main case itself as expeditiously as possible.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge