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HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 88 of 2017**

(Arising out of judgment dated 4-2-2017 passed by the First Additional Principal Judge, Family Court, Durg, in Civil Suit No. 97-A/16.)

1. Tapan Kumar Nath S/o Late Shri Narayan Nath, Aged About 52 Years Presently R/o J-2, Shatabdi Nagar (Telibandha) P.O. Ravi Gram, Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Ku. Shirsha Nath @ Tulika Nath D/o Shri Tapan Kumar Nath, Aged About 21 Years R/o MIG 01/826, Aamdi Nagar, Bhilai, Tehsil & District Durg, Chhattisgarh

---- Respondent**And****FAM No. 137 Of 2017**

1. Ku. Shirsa Nath @ Tulika Nath D/o Tapan Kumar Nath, Aged About 18 Years R/o M I G 01/826, Amdi Nagar, Bhilai, District Durg, Chhattisgarh

---- Petitioner**Vs**

1. Tapan Kumar Nath S/o Late Narayan Nath, Aged About 50 Years R/o Superintendent Central Custom And Excise Duty, Raigarh, District Raigarh, Chhattisgarh, Presently-Superintendent Central Customs And Excise Duty, Tikrapara, Raipur, District Raipur, Chhattisgarh, R/o J-2, Satabdi Nagar, (Telibandha) P.O. Ravi Gram, Raipur, District Raipur, Chhattisgarh

---- Respondent

 For Tapan Kumar Nath (Father)

Shri Ankit Singhal Advocate

For Ku.Shrisa Nath @ Tulika Nath
(Daughter)

Shri Shrawan Agrawal
Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board

By

Prashant Kumar Mishra, J

18/08/2017

1. FAM No.88 of 2017 has been preferred by the father (Tapan Kumar Nath) (For brevity appellant-father) challenging grant of maintenance awarded by the Family Court in favour of his daughter Ku. Shrisa Nath @ Tulika Nath for prosecuting B.E. (Electronics and Telecommunications) course from the Chhatrapati Shivaji Institute of Technology, Durg.
2. FAM No. 137 of 2017 has been preferred by the daughter Ku. Shrisa Nath @ Tulika Nath (For brevity respondent-daughter) claiming grant of such expenses for studies from the date of application rather than the date of order which has been allowed by the Family Court.
3. Admittedly, the father is working as Superintendent in the Department of Central Excise, Government of India, Raipur

drawing gross salary of Rs. 76,708/- per month. It is also not in dispute that the daughter and her mother (wife of Tapan Kumar Nath) are residing separately at Bhilai, District Durg and further that Ku.Shrisa Nath @ Tulika Nath is the only issue out of the wedlock.

4. Shri Ankit Singhal, learned counsel appearing for the father-Tapan Kumar Nath, would submit that the daughter should have sought consent of the father before taking admission in a private college by explaining that she has attempted to get admission in a Government College and having failed in such attempt she is compelled to obtain admission in the private college. It is, thus, emphasized that if the daughter would have been admitted in a Government College she would not incur huge expenses in prosecuting the studies. It is also apprehended that if the daughter succeeds in getting admission for the higher studies in a foreign institution she will claim exorbitant amount from him in future. Learned counsel would lastly submit that in proceedings under Section 125 of Cr.P.C., the daughter has already been allowed maintenance of Rs.4500/- per month, which has not been considered while awarding the impugned maintenance in her favour.
5. Shri Shrawan Agrawal, learned counsel appearing for the daughter-Ku.Shrisa Nath @ Tulika Nath, *per contra*, would

submit that the father should have been directed by the Family Court to pay the expenses incurred by his daughter towards her studies from the date of application. According to learned counsel, the mother of Ku.Shrisa Nath @ Tulika Nath is not an earning member, therefore, it has become difficult for the daughter to prosecute her studies in an effective manner.

6. Having considered the rival submissions, it appears to us that the father's apprehension of incurring exorbitant expenditure in future, if the daughter eventually decides to prosecute further studies in a foreign institution is hypothetical and, as such it cannot be considered at this stage. For the present, we are only concerned with the legality, validity and correctness of the order impugned and further as to whether the amount awarded in favour of the daughter should have been awarded from the date of application.
7. There is nothing on record to indicate that the appellant-father is not earning gross salary of Rs.76,708/-, but is getting an amount much below that. Since the family consists of the appellant (father), his wife and their only daughter and the appellant-father has no other expenses than the expenses which he has to incur for himself, in such a situation, the award of maintenance to the respondent-

daughter in form of expenses for studies to prosecute her BE Course is neither illegal nor unreasonable. At the same time, we are also required to consider as to the adequacy or appropriateness of the sum awarded to the respondent-daughter for prosecuting her BE course.

8. There is material on record that per semester fee for BE course is Rs.32,700/-, which comes to Rs.65,400/- for the full year of 2 semesters. The Family Court has allowed expenses towards books, stationeries and other related expenditure at Rs.20,000/- per semester.
9. Considering the present day trend where the students prepare themselves by using the library of the Institution and by obtaining study materials online, the award of Rs.20,000/- per semester under this head appears to be excessive. The expenditure on this count is taken at Rs.10,000/- per semester, which comes to Rs.20,000/- for the whole year. In addition, the Family Court has also allowed conveyance allowance of Rs.10,000/-, which we assume that it is for the whole year. Therefore, the total expenditure which the respondent-daughter would incur for prosecuting her BE Course comes to Rs.95,400/- per year and the same is rounded off to Rs.96,000/- per year.
10. If the amount is calculated on monthly basis, it comes to

Rs.8000/- per month. Accordingly, the order impugned passed by the Family Court is modified to the extent that the appellant-father shall pay a sum of Rs.8000/- per month to the respondent-daughter for meeting out her expenditure for prosecuting the BE Course.

11. The Family Court has awarded the maintenance/expenses from the date of the order.
12. In our considered view, if the appellant-father is held liable to pay the maintenance for meeting out the expenditure incurred by the respondent-daughter for prosecuting her BE Course, there is no reason as to why the amount should not be allowed from the date of the application. Allowing the maintenance from the date of order has its own complications because, in a given case, the person liable to maintain would drag on the litigation and if by the time the proceeding attains finality, the BE course is already over, no liability will be fastened on the person concerned.
13. Even otherwise, the law is well settled that ordinarily the amount of maintenance is to be allowed from the date of application and whenever such amount is directed to be paid from the date of order, the Court has to assign the reason for departure from the normal rule.
14. In the case at hand, the Family Court has not assigned any

specific reason as to why the amount is awarded from the date of order and not from the date of application.

15. In view of the above discussion, the impugned order passed by the Family Court is modified to the extent that appellant-father Tapan Kumar Nath shall pay the amount of maintenance to meet out the expenditure incurred by the respondent-daughter for prosecuting her BE Course @ Rs.8000/- per annum from the date of application ie. October 2013. The entire amount of arrears shall be paid within a period of 03 months from today. The amount paid by the appellant-father to the respondent-daughter after passing of the impugned decree shall be adjusted.
16. In the event, the amount is not paid, the respondent-daughter would be at liberty to move appropriate application before this Court for compliance of the order.
17. Both the appeals are accordingly disposed in the above stated terms.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Arvind Singh Chandel)

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