

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 353 of 2017

1. Smt. Bhagwaniya Bai W/o Padum Yadav Aged About 26 Years R/o Village Paradol, Karhitola Police Station Jhagrakhand Tehsil Manendragarh , District Korea, Chhattisgarh.
2. Rambhajan Yadav S/o Padum Yadav Aged About 8 Years (Minor) Through: Their Mother, Applicant No.1 Smt Bhagwaniya Bai, R/o Village Paradol, Karhitola Police Station Jhagrakhand Tehsil Manendragarh , District Korea, Chhattisgarh.
3. Shivbhajan Yadav S/o Padum Yadav Aged About 6 Years (Minor) Through: Their Mother, Applicant No.1 Smt Bhagwaniya Bai, R/o Village Paradol, Karhitola Police Station Jhagrakhand Tehsil Manendragarh , District Korea, Chhattisgarh.
4. Roashni Bai Yadav D/o Padum Yadav Aged About 4 Years (Minor) Through: Their Mother, Applicant No.1 Smt Bhagwaniya Bai, R/o Village Paradol, Karhitola Police Station Jhagrakhand Tehsil Manendragarh , District Korea, Chhattisgarh. --- **Petitioners**

Versus

- Padum Yadav S/o Late Ramlal Aged About 26 Years R/o Ward No. 21 Rapakherwa Manendragarh Tehsil Manendragarh District Korea, Chhattisgarh. --- **Respondent**

For the applicants : Mr. Shakti Raj Sinha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16.08.2017

1. This revision is against the order dated 02nd March 2017 passed by the Family Court, Manendragarh, Distt. Korea (C.G) in Misc. Criminal Case No.73 of 2015. Despite service of notice to the respondent, no representation is made. The present petition is on behalf of Ram Bhajan Yadav, Shiv Bhajan Yadav and Roshni Bai who have been shown to be minors and the name of Smt. Bhagwaniya Bai was deleted by order dated 02.03.2016.
2. Learned counsel for the petitioner would submit that in the

earlier round of litigation, the application preferred by the wife which was filed on 04.04.2012 was dismissed on 15.07.2013 on the ground that the wife was not able to project that she was living without any sufficient cause as such it was dismissed.

3. Learned counsel submits that the interse relation between the parties are not in dispute as the applicants Rambhajan Yadav, Shivbhajan Yadav and Roshni Bai are the children of respondent Padum Yadav, therefore, in any case, the children can ultimately claim maintenance u/s 125 of Cr.P.C. He further submits that the application for maintenance ought not to have been dismissed in toto in view of the finding at Para 10 of the order, therefore, the case be remitted back to the Court below for adjudication on merits.
4. Perused the order dated 02.03.2017. The learned court below at para 10 of its order has observed that as per the order dated 02.03.2016, the application preferred even if is filed on behalf of illegitimate children they cannot be non-suited and as such, the second application on their behalf can be entertained.
5. A perusal of the case file would show that the name of Bhagwani Bai has been deleted by an order dated 02.03.2016. The order dated 02.03.2017 observed that the earlier petition which was filed on behalf of the children cannot be held to have been adjudicated and dismissed and the application on behalf of the minor children against their father would be very much maintainable. The present petition shows that after passing of the order dated 02.03.2016 the name of the mother Bhagwani was deleted. Thereby the minor children Rambhajan, Shivbhajan and

Roshni are entitled to claim maintenance. Hence the order of the learned court below cannot be sustained on the footing that the entire application was not tenable in view of the fact that the earlier application filed by the wife was dismissed.

6. Consequently the order dated 02.03.2017 is set aside and the matter is remitted back to decide the same on merits by considering the applicants as Rambhajan, Shivbhajan and Roshni Bai who are stated to be the children of respondent Padum Yadav.
7. This revision is disposed of with the above observation/direction.

**Sd/-
GOUTAM BHADURI
JUDGE**