

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 888 of 2016**

Radheshyam S/o Sonu Koshley Aged About 36 Years R/o Village- Sendari, Tahsil Katghora, District- Korba, Chhattisgarh. Present Address:- Bankimongra, Gajra Side, Quarter No. 102/7, Tahsil Katghora, District- Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Rajani Koshley W/o Radheshyam Aged About 29 Years
2. Ashish Kumar S/o Radheshyam Aged About 11 Years
3. Subham S/o Radheshyam Aged About 9 Years

Respondents No. 2 & 3 Minor Through - Natural Guardian Mother Smt. Rajni Koshley (Respondent No. 1) all R/o Village - Sendari, Tah. Katghora, District - Korba Chhattisgarh

Present Address:- C/o Reshamlal Jangde, Village Kera, Police Station Navagarh, District - Janjgir - Champa Chhattisgarh.

---- Respondents

For Petitioner

Shri Ravindra Sharma, Advocate.

For Respondents

Shri Pushpendra Kumar Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/01/2017**

1. The present revision has been preferred assailing the order dated 17.08.2016 whereby the objection preferred by the present petitioner was rejected in respect of maintainability of the application under Order 9 Rule 9 CPC filed by the respondents seeking for restoration of the application which got dismissed earlier.
2. The respondents have filed an application under Section 125 CrPC seeking for maintenance from the present petitioner. The said application was allowed on 05.04.2013 and an amount of Rs. 6800/- per month was ordered to be paid to the respondents as maintenance amount. The said order has not been questioned by the petitioner and as such the same has attained its finality. Subsequently, an application under Section 127 was filed on 27.07.2015 which for the first time got dismissed on 27.12.2015 for want of prosecution. MCC was filed for restoration of the said dismissal

of application under Section 127 CrPC, but the same also got dismissed for want of prosecution on 09.03.2016. Subsequently, fresh application under Order 9 Rule 9 CPC was filed on 12.04.2016 in which the objection was filed by the present petitioner in respect of its maintainability which has been rejected leading to filing of the present revision petition.

3. Without entering into the merits of the case, this court is of the opinion that since the application was filed by the respondents seeking for enhancement of maintenance and that order was passed granting maintenance almost about 4 years back, the right of the respondent seeking for enhancement on the maintenance amount by virtue of rise in the cost of living in the intervening period cannot be denied or disputed.
4. Thus, taking into consideration the peculiar facts and circumstances of the case where the respondents is still pursuing their remedy seeking for restoration of the application for restoration, let the respondents file a fresh application under Section 127 CrPC seeking for enhancement of the maintenance amount considering the duration of time that has lapsed from the date of original order under Section 125 CrPC being passed i.e. on 05.04.2013.
5. With the aforesaid liberty, the revision is disposed of. It is made clear that the orders passed by the court below in the previous proceeding under Section 127 CrPC and subsequent restoration applications shall not come in the way of the respondents while pursuing their fresh application for enhancement of maintenance afresh, if so filed.
6. All the proceedings initiated by the respondents shall be allowed to be withdrawn with the aforesaid liberty.

Sd/-
(P.Sam Koshy)
Judge