

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 24.9.2019****Order delivered on 16.12.2019****CRR No. 384 of 2019**

- Umenda Jaiswal S/o Shri Ramji Jaiswal Aged About 30 Years R/o Village - Moha - Madwa, Police Station Kunda, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Applicant**Versus**

- Ku. Varsha Jaiswal D/o Shri Umenda Jaiswal Aged About 2 ½ Years Caste - Kalar, (Minor) Through Natural Guardian Mother Namely Durgeshwari Jaiswal, W/o Umenda Jaiswal, Aged About 26 Years, R/o Village Bhimpuri, Police Station And Tahsil - Takhatpur, District - Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

----Respondent

For Applicant	: Shri Prakash Tiwari, Advocate
For Respondent	: Shri Ram Sajivan Jaiswal, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. Heard on admission.
2. This revision is directed against the order dated 07.12.2018 passed by the Additional Principal Judge, Family Court, Bilaspur(CG) in MJC No.405/2017, whereby the Judge Family Court has awarded interim maintenance of Rs.2,000/- per month to the respondent, minor daughter aged about 2 ½ years filed by her through mother.
3. Brief facts of the case are that before the Family Court the respondent(daughter) filed an application under Section 125 Cr.P.C. claiming maintenance of Rs.4,000/- per month through her

mother against the applicant (father) on the ground that she is living with her mother. It is pleaded that marriage of the applicant(father) and respondent's mother was solemnized on 18.4.2014 and out of their wedlock, respondent(daughter) has born on 12.7.2015. Relations between the applicant and respondent's mother were not cordial, therefore, they are living separately. The respondent (daughter) is living with her mother and being a father, the applicant is liable to maintain his minor daughter, therefore, application under Section 125 Cr.P.C. was filed by the respondent.

4. In reply, the applicant denied all the allegations levelled against him and pleaded that during the pendency of interim maintenance, he has drawn proceedings under Section 7 & 10 of the Guardians and Wards Act, 1890 for custody of his daughter/ minor child and the matter is sub-judice before the Family Court, Bilaspur.
5. The Family Court after hearing counsel for both the parties and going through the evidence, passed the order of interim maintenance dated 7.12.2018 and granted interim maintenance of Rs.2,000/- per month to the respondent/minor daughter. Hence, this revision has been filed by the applicant for setting aside the order.
6. Learned counsel for the applicant submitted that the order passed by the Family Court is arbitrary, illegal and contrary to law. Mother of the respondent/minor daughter has got subsequently married

on 10.8.2016 and left her daughter/respondent with her grandfather and grand-mother(Nana-Nani). The respondent has filed this application through her natural guardian(mother), but mother of the respondent is no longer her natural guardian as she got married with another person and residing elsewhere with her husband and enjoying the marital life, leaving behind the future of the minor child in dark. The applicant has already filed an application under Sections 7 and 10 of the Guardians and Wards Act for taking custody of his minor daughter before the Family Court on 7.3.2018, which is pending for adjudication, therefore, the impugned order is liable to be set aside.

7. On the other hand, learned counsel for the respondent supported the impugned order and submitted that the order passed by the Family Court is just and proper and requires no interference.
8. I have heard learned counsel for the parties and perused the record.
9. For grant of interim maintenance, the Court has to see prima-facie relationship between the parties and earning capacity of the person/husband/father as the case may be. The applicant has also filed an application for custody of his minor daughter, meaning thereby the respondent/daughter is not living with him. The Family Court has awarded interim maintenance of Rs.2,000/- per month to the respondent/minor daughter aged about 2 ½ years. The applicant has to prove his case through oral and documentary evidence before the Family Court where his

application for taking his daughter in custody filed under Section 7 and 10 of the Guardians and Wards Act is pending for adjudication. Considering the overall evidence and the facts and circumstances of the case, I am of the view that the Family Court has rightly passed the order of interim maintenance in favour of the respondent/minor daughter who is presently aged about 2 ½ years and it requires no interference by this Court.

10. Accordingly, the revision filed by the applicant for setting aside the order is dismissed. However, the applicant would be at liberty that if he succeeds in taking custody of his minor daughter, he can pray for necessary amendment in the order of maintenance passed by the Family Court.
11. With the above observation, the revision stands disposed of at the admission stage itself.

Sd/

(Rajani Dubey)

JUDGE