

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1072 of 2019**

1. Smt. Vidya Nishad W/o Omprakash Nishad, Aged About 26 Years
R/o C/o Harish Sahu, Phool Chowk, Joraparra, Police Station -
Azad Chowk, Raipur Tahsil And District - Raipur Chhattisgarh,
District : Raipur, Chhattisgarh
2. Kanha Nishad S/o Omprakash Nishad, Aged About 1 Years Minor,
Represented Through Mother Smt. Vidya Nishad, R/o C/o Harish
Sahu, Phool Chowk, Joraparra, Police Station - Azad Chowk,
Raipur Tahsil And District - Raipur Chhattisgarh., District : Raipur,
Chhattisgarh

---- Applicants

Versus

- Omprakash Nishad S/o Shri Radheshyam Nishad Aged About 26
Years R/o Village - Bahinga, Police Station - Berla, Tahsil And
District - Bemetara Chhattisgarh., District : Bemetara,
Chhattisgarh

---- Respondent

For Applicants	: Shri Aditya Khare, Advocate
For Respondent	: None

Hon'ble Smt. Justice Rajani Dubey**Order on Board****04.09.2019**

1. Heard on admission.
2. This revision is directed against the order dated 22.6.2019,
passed by the 2nd Additional Principal Judge, Family Court, Raipur
(CG) in Case No.262/2018, whereby the Judge Family Court has
partly allowed the application filed by the applicants for interim
maintenance and granted interim maintenance of Rs.3000/- per
month in favour of applicant No.1(wife) and dismissed the
application filed on behalf of applicant No.2(son).

3. Brief facts of the case are that before the Family Court the applicants filed an application under Section 125 Cr.P.C. claiming maintenance of Rs.60,000/- per month to them against the husband/respondent on the ground that they are wife and son of the respondent. Applicant No.1 alleged that the respondent has ousted her from house after the birth of applicant No.2 and since 26.10.2016, they are living separately.
4. It is not disputed that applicant No.1 is legally wedded wife of the respondent. But, the respondent has denied applicant No.2 being his son. He pleaded that applicant No.1 herself has accepted in Police Station that applicant No.2 is son of one Hiteshwar Dewangan and he is not father of applicant No. 2, therefore, he is not responsible to maintain applicant No.2.
5. The Family Court after hearing both the parties and appreciating, passed the order of interim maintenance and granted Rs.3000/- per month to applicant No.1 and denied maintenance to applicant No.2. Hence, this revision has been filed by the applicants for grant of interim maintenance to applicant No.2 and enhance the amount of maintenance granted to applicant No.1.
6. Learned counsel for the applicants submits that after marriage, applicant No.1 was living with the respondent/husband and applicant No.2 has born out of their wedlock, but the respondent is suspecting the character of his wife and therefore, he has denied the paternity of applicant No.2. He submits that the order passed by the learned Family Court is perverse, arbitrary and erroneous therefore, the same is liable to be set aside and

maintenance may be ordered in favour of applicant No.2 as also maintenance amount granted to applicant No.1(wife) may be enhanced.

7. I have heard learned counsel for the applicants and perused the record.
8. For grant of interim maintenance, the Court has to see prima-facie relationship between the parties and earning capacity of the husband. It is clear from the order passed by the Family Court that the respondent has accepted that applicant No.1 is his wife but he denied paternity of applicant No.2 and stated that applicant No.1 is son of one Hiteshwar Dewangan, which is disclosed by applicant No.1 herself in Police Station. The Family Court has prima facie found that applicant No.1 is legally wedded wife of the respondent but, paternity of applicant No.2 is disputed and passed the order of interim maintenance in favour of applicant No.1 for Rs.3000/- per month. This Court do not find any illegality or infirmity in the order passed by the Family Court warranting interference by this Court and paternity of applicant No.2 has to prove before the Court below.
9. Accordingly, the revision is dismissed at the motion stage itself without issuing notice to the respondent.

Sd/

(Rajani Dubey)

JUDGE