

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 997 of 2017**

Devlal son of late Anuj Ram Sahu, aged about 30 years, resident of Railway Zone Office, GRM office, Bilaspur, District Bilaspur (CG)

---- Applicant**Versus**

Smt. Durga Bai Sahu, W/o late Shri Anuj Ram Sahu, Aged, about 50 years, resident of near New Railway Zone Grih Nirman Colony, Uslapur, P.S. Civil Line Bilaspur, District Bilaspur (CG)

----Respondent

For Applicant	: Shri R.S. Patel, Advocate
For Respondent	: Shri Krishan Tandon, Advocate on behalf of Shri Amit Sharma, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24.7.2019**

1. This revision is directed against the order dated 08.9.2017, passed by the Additional Principal Judge, Family Court, Bilaspur, District Bilaspur(CG) in MJC No. 192/2016, whereby, the Judge Family Court has allowed the application filed by the respondent under Section 125 Cr.P.C. and granted her maintenance of Rs.6000/- per month.
2. Facts of the case are that the respondent is step mother(second wife) of the applicant as father of the applicant married with the respondent after death of his first wife and mother of the applicant. The applicant got compassionate appointment in his father's department. The respondent filed an application before the Family Court under Section 125 Cr.P.C. claiming maintenance of

Rs.10,000/- per month stating that she is step mother of the applicant and after her marriage with the father of the applicant- Anuj Ram Sahu, she has been caring the applicant like her children and when her husband (father of the applicant) died on 22.6.2014, she did not claim for compassionate appointment and left that job for the applicant i.e his son and therefore, the applicant was appointed in place of his father as Peon. She alleged that the applicant and his brothers have abused and beaten her and ousted from the house. The applicant is getting salary of Rs.24,000/- per month, but he is not maintaining her. She is not able to maintain herself, therefore, she has filed the application for grant of maintenance.

3. Denying the allegations, the applicant pleaded that the respondent is not legally married wife of his father. The respondent was firstly married to one Hiralal Sahu, resident of Khairjithi, District Kawardha, thereafter, she was living as wife with Jalaram Sahu, where she gave birth to 2 daughters and 2 sons. Thereafter, she left the house of both the husband and without obtaining divorce from them, she married his father, which is not legally valid. He submits that he got compassionate appointment on the post of Peon as 4th class employee and receiving salary of Rs.24,000/- per month. The applicant has 2 brothers namely- Bharatlal Sahu and Premlal Sahu and all of them have been thrown out from the house by the respondent (step mother).The respondent did not leave the compassionate appointment in his favour, but he got the appointment in the year 2007 as his father Anuj Ram Sahu was

suffering from nerve brain disease, he was undergoing treatment to Psychiatrist and in 2007, the Senior Board Medical Officer SECR found his father unfit for work, thus, he was appointed in lieu of his father, Anuj Ram Sahu and his father was alive till 22.6.2014. He pleaded that the respondent by fraud get her name nominated in the office records of his father and she is getting family pension of Rs.9,000/- per month and presently, she is drawing Rs.10,286/- per month.

4. The learned Family Court after hearing counsel for both the parties and the evidence on record, granted maintenance of Rs.6,000/- per month in favour of the respondent. Hence, this revision.
5. Learned counsel for the applicant submits that the order passed by the learned Family Court is perverse and contrary to law. The family has failed to consider that the applicant has never tortured the respondent. The respondent is receiving a handsome amount of Rs.9,000/- per month as family pension from the SECR Bilaspur, which is sufficient for her livelihood and she was married to his father without obtaining divorce from the first and second husband, which is not a valid marriage. The Family Court has also failed to consider the evidence of respondent's witnesses. The respondent herself has stated in her evidence that she is getting family pension of Rs.6,000/-. He further submits that the applicant had taken house loan of Rs.3 lacs and Rs.1 lac, total Rs. 4 lacs from Gruh Finance Ltd. Bilaspur, for which installment of Rs.8500/- is being deducted from his salary and he has also taken personal loan and after deduction, he is getting salary of Rs.12,330/- in hand. He

submits that the Family Court did not consider the liability of the applicant for his 2 brothers, who are unmarried and are also dependent on him, therefore, the order is liable to be set aside.

6. On the other hand, learned counsel for the respondent supported the impugned order and submits that there is no illegality or perversity in the impugned order passed by the Family Court.
7. I have heard learned counsel for the parties and perused the record.
8. The applicant has filed I.A.No.1/2018, I.A.No.2/2018 and application under Section 401/391 Cr.P.C., which are the applications for taking additional documents on record. Learned counsel for the applicant submits that the documents are related to the income of the respondent and the applicant and those are necessary for proper adjudication of the case, therefore, they may be taken on record. Reliance is placed on **Beena Kumari and Others V. Manoj Kumar, 2019 SCC Online Del 7237.**
9. Learned counsel for the respondent opposes the above applications and submits that those documents are not necessary for adjudication of the matter.
10. The documents are related to dispute between the parties, more particularly, related to income of the respondent and relation of the applicant with the respondent which were not considered by the trial court as the same have been obtained after passing of the impugned order. Since this is a dispute of family matter as also

maintenance, these documents should first be examined by the trial Court.

11. On due consideration, I.A.No.1/2018, I.A.No.2/2018 and application under Section 401/391 Cr.P.C. are allowed. The impugned order dated 8.9.2017 passed by the Additional Principal Judge is set aside. Documents filed by the applicant are taken on record as an additional evidence. The matter is remitted back to the trial Court. The trial Court, after production of the said documents, shall proceed to hear the case and decide it afresh, in accordance with law. The trial Court shall grant time to both the parties to amend their pleadings and to produce any additional evidence regarding the alleged documents before the proceedings, if they so desire.
12. It is made clear here that this Court neither touched upon nor expressed any opinion on the merits of the case and only production of additional evidence has been permitted. The trial Court shall be free to form its own opinion afresh on all the questions of facts and law arising for decision in the case.
13. The parties, through their respective counsel, are directed to appear before the trial Court on **16.9.2019**.
14. The original pass-book which is attached with application under Section 401/397 Cr.P.C., be returned to the applicant after retaining photocopy of the same.

Sd/

(Rajani Dubey)
JUDGE