

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 41 of 2020

- Ajay Vishwakarma S/o Late Shri Gopal Pd. Vishwakarma Aged About 35 Years Occupation Service, R/o Nagar Nigam Colony, Near Durga Namak Chakki, Infront Of Ganesh Mandir, Near Deshbandhu Press, Ramsagar Para, P. S. Azad Chowk, Raipur District Raipur Chhattisgarh

---- Applicant

Versus

1. Sunita Vishwakarma W/o Shri Ajay Vishwakarma Aged About 33 Years
2. Ku. Shardha Vishwakarma D/o Shri Ajay Vishwakarma Aged About 7 Years Non-Applicant No. 02, Is Minor Through Their Natural Guardian Her Mother i.e. Non-Applicant No. 01 Sunita Vishwakarma,
3. Ku. Uma Vishwakarma D/o Shri Ajay Vishwakarma Aged About 5 Years Non-Applicant No. 03, Is Minor Through Their Natural Guardian Her Mother i.e. Non-Applicant No. 01 Sunita Vishwakarma,

(All are R/o Nagar Nigam Colony, Near Durga Namak Chakki, Infront Of Ganesh Mandir, Near Deshbandhu Press, Ramsagar Para, P. S. Azad Chowk, Raipur District Raipur, Chhattisgarh, At Present R/o Shani Mandir Gali, Near Kerma School, Ramsagar Para, Tahsil And District Raipur, Chhattisgarh)

--- Non-applicants

For Applicant

– Mr. Yogesh Pandey, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-12-2020

Heard.

1. The present criminal revision has been filed against the order dated 22.11.2019 passed by the Family Court, Raipur, C.G. granting maintenance of Rs.7,000/- to the respondents.

2. It is submitted by the learned counsel for the applicant that the learned Family Court has not made any observation or drawn any conclusion with respect to the income of this applicant and his capacity to pay the interim maintenance to the respondents. The order of interim maintenance passed exceeds the actual income of the applicant which is not more than Rs.5,000/- per month as the applicant works as a delivery boy in Zomato, which is a website for online marketing. Therefore, the order passed by the learned Family Court is not a speaking order and thus erroneous, which is liable to be set aside.
3. Notices were issued to the respondent side and the respondent No.1 has sent written reply through post in which she has opposed the statement made in the revision petition. She has denied that the income of the applicant is not more than Rs.5,000/-, however, she has also not made any statement as to what is the income of the applicant.
4. Heard learned counsel for both the parties and perused the documents.
5. Considered on the submissions, as it appears that in a case of maintenance under Section 125 of Cr.P.C., the capacity of the husband/father is also needed to be taken into consideration before passing any order for grant of maintenance to his dependents. Therefore, such an observation or the conclusion has to be drawn at a preliminary stage while deciding an application for grant of interim maintenance. Hence, for these reasons, I feel inclined to allow this revision petition. The revision petition is allowed and the impugned order is set aside, however, the application for interim maintenance to the

respondent side is restored. The learned Family Court is directed to give opportunity of hearing to both the parties and decide the application for interim maintenance afresh in accordance with law within a period of one month from today.

6. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika