

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 797 of 2019

- Amjad Khan S/o Shri Raffiullah Khan, Aged About 38 Years, R/o Near Rahmat Kirana Stores, Krishna Nagar, Santoshi Nagar, Police Station Tikrapara, Tahsil and District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

1. Smt. Asma Begum W/o Amjad Khan, Aged About 36 Years, R/o D.N.K. 80/2, Block No. 11, Police Station Mana Camp, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Alsifa Khan D/o Amjad Khan, Aged About 4.5 Years, through her legal guardian mother Smt. Asma Begum, Age About 36years, W/o Amjad Khan, R/o D.N.K. 80/2, Block No. 11, Police Station Mana Camp, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Applicant – Shri Yogesh C. Pandey, Advocate.

For Respondents – Shri Soumitra Kesharwani Advocate on behalf of Shri Awadh Tripathi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

17-11-2020

Heard.

1. This revision petition has been brought against the order dated 08-05-2019 passed by the First Additional Principal Judge, Family Court, Raipur (C.G.) in M.J.C. No.565/2014.
2. The respondents had filed application under Section 125 of the Cr.P.C. praying for grant of monthly maintenance from this applicant. The application was contested by the applicant herein and on conclusion of the proceeding the impugned order was passed. The plea of monthly maintenance of respondent No.1 was dismissed on the ground that she was capable to maintain herself, whereas, the application of respondent No.2 was allowed and it was ordered that maintenance of Rs.5000/- per month shall be paid to her by this applicant. .
3. Learned counsel for the applicant submits that the learned Family Court

has passed unreasonable order. Evidence led by the applicant side very clearly stated that the income of the applicant per month was Rs.5000/- to Rs.6000/- only and he was also paying house rent of Rs.4000/-. Although learned Family Court has held that payment of rent of Rs.4000/- for house was not believable, even then the maintenance of Rs.5000/- as ordered is too much on the higher side for the reason that it is a bulk of the income of the applicant, because of which it is difficult for him to survive on the remainder. Hence, indulgence of this Court is prayed for and it is prayed that appropriate order be passed.

4. Learned counsel for the respondents submits that the applicant had been working in different concerns. Although he has admittedly made statement about his income Rs.6000/- per month, but at present his income may have enhanced and apart from that, the respondent No.2 is daughter of the applicant for which the applicant has liability to pay for her maintenance. Therefore, learned Family Court has not committed any error in passing the impugned order. Therefore, the present revision petition be dismissed.

5. Considered on the submissions and also perused the record of the proceeding of the Family Court. Respondent No.1 has stated in her statement that the applicant was employed in some private company, but she did not know about his monthly income. In cross-examination a suggestion was given that monthly income of the applicant was Rs.6000/-, to which she has again denied knowledge.

The applicant has in his statement in the proceeding stated that he used to work as Salesman in a Mall, where at the time of joining his salary was Rs. 5000/- and at that time he was receiving Rs.6000/- per month. He has also stated that he resides in a rented house for which he has to give rent Rs.4000/- per month.

The statement regarding income of the applicant has been made by the applicant himself. Learned Family Court has disbelieved the statement of the

applicant regarding the amount he had mentioned as payment of rent for the house in which he was residing as that appears to be reasonable and I agree with the observation so made by learned Family Court. Therefore, on the basis of the evidence present the only conclusion that can be drawn is this, that the applicant had monthly income of Rs.6000/- per month at the time when the statement of the parties were recorded. This Court cannot go beyond the evidence which is present in the record of the proceeding. Therefore, looking to the evidence, order for maintenance of Rs.5000/- per month to respondent No.2 appears to be unreasonable, as it is clear that the remainder is the amount of Rs.1000/- only, which cannot be said to be sufficient for survival of the applicant himself. Therefore, the order of maintenance had to be on the reasonable side. Hence, I feel inclined to allow this revision petition.

6. Accordingly, this revision petition is allowed and the impugned order is interfered with. It is ordered that the amount of monthly maintenance to respondent No.2 of Rs.5000/- is reduced to Rs.3000/- per month which shall be payable from the date as ordered by learned Family Court itself.

7. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge