NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.198 of 2019

Chhatrapal Lahre S/o Bhaskar Lahre Aged About 32 Years Caste Suryawanshi R/o Village Mehandi, Tahsil Pamgarh, District Janjgir - Champa Chhattisgarh **----Appellant**

Versus

Smt. Rajni Lahre W/o Chhatrapal Lahre Aged About 25 Years R/o Village Mehandi, Tahsil Pamgarh District Janjgir -Champa Chhattisgarh At Present Address Village Paradiya, Tahsil Pamgarh, District Janjgir-Champa Chhattisgarh **--- Respondent**

For Appellant : Mr. Aditya Khare, Advocate
For Respondent : Mr. C.P. Lahrey, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board by Manindra Mohan Shrivastava, J.

13/01/2020

1. With the consent of the parties, the matter is heard finally.

2. This appeal is directed against impugned judgment and decree dated 30.03.2019 passed by the Family Court, Janjgir, District Janjgir-Champa (CG) in Misc. Case No.15 of 2017, whereby, the application for grant of custody of his minor daughter Ku. Somiya, aged about 5 years, (at the time of filing of application) has been rejected.

3. The appellant moved an application under Section 7 of the Guardians and Wards Act, 1890, read with Section 6 of the Hindu Minority and Guardianship Act, 1956 for grant of custody of his minor daughter Ku. Somiya, aged about 5 years on the pleadings that the appellant was married to respondent/Smt. Rajni Lahre on 02.05.2009 and from their wedlock, a son was born and thereafter, a daughter was also born. It was pleaded by the appellant that while the respondent-wife was carrying pregnancy, she left the matrimonial house and started living in her parental house and gave birth to a girl child on 31.05.2012. Further case was that though, the appellant is the father of Ku. Somiya, he is not being allowed to even meet and take care of his own daughter, by the respondent-wife. The appellant and respondent-wife

have already initiated several proceedings and at present, the father of the girl is entitled to custody of his daughter as he is willing to provide proper education and also maintain the daughter.

4. The application for grant of custody was contested by respondent-wife by filing written statement, in which, it was stated that while she was carrying pregnancy, she was unceremoniously shunted out from her matrimonial house on 11.11.2011 when she was beaten up also. Thereafter, she came back to her parental house along with her son Paras but later on, the appellant snatched the son away from her. Further, pleading was that ever since respondent gave birth to girl child namely Ku. Somiya, though the appellant was informed, the appellant did not take any care of his wife and even the minor daughter and on the other hand, he insisted the respondent to come back to the matrimonial house and also advised her to kill the child, if she is not even able to maintain. Specific plea was taken that the appellant never visited to see his daughter nor he is taking any care. It was also stated that the respondent is taking proper care of her daughter and the application has been filed only after an award of maintenance passed in favour of minor daughter.

5. Learned Court below, after allowing the parties to lead their oral and documentary evidence, came to the conclusion that the paramount consideration being the welfare of the child, it is in the interest of the girl child, who is aged about 7 years that she continues in the custody of her mother. In coming to this conclusion, learned trial Court has taken into consideration that the conduct of the appellant that ever since the birth of the daughter, he never visited the house of wife nor had taken any steps towards her maintenance.

6. Learned counsel for the appellant argues that the Court below has not properly appreciated the evidence on record with regard to the appellant's conduct and efforts made by him to meet his minor daughter/Ku. Somiya and also attempts made by him to bring his wife and daughter back to the matrimonial house. He would further submit that apart from the appellant, who was examined as witness No.1 and applicant's witness No.3 both have clearly deposed that the appellant had made an attempt to meet his daughter and also to bring about settlement of the dispute through intervention of the committee members. It is further submitted that though at the time when the application was moved, the daughter was too young, aged about 5 years at the time when the order was passed, daughter attained 7 years of age. Therefore, the Court below ought to have granted custody of the child to the appellant.

7. On the other hand, learned counsel for the respondent opposes the prayer and submits that the learned Court below, after taking into consideration the evidence on record, particularly, that ever since the date of birth of the minor girl, the appellant has not made any attempt to meet her nor he, himself, has clearly stated regarding any efforts made by him with specific evidence of the date when he attempted to meet his wife and the daughter and further that the daughter was also interacted and she clearly expressed her willingness to continue to reside with her mother and that mother is providing proper education and taking care of all the needs of the child, has rightly rejected the application.

8. We have heard learned counsel for the parties and perused the records. Even according to the evidence of the applicant's witness No.1, appellant, himself, and another applicant's witness No.3/Laxman (AW3), the minor child named Ku. Somiya was born on 13.05.2012 when the respondent wife was residing in her parental house. The evidence led by the appellant and respondent both show that there is a dispute between the husband and wife and both have instituted proceeding for restitution of conjugal rights as well as for divorce. However, it is not in dispute and it is an admitted position from the pleadings and evidence of the appellant that the respondent had given birth to the girl child on 13.05.2012 when she was residing with her parents in her parental house.

9. The appellant, neither in his affidavit under Order 18 Rule 5 CPC nor in his cross-examination has anywhere stated as to when he visited to see his daughter. There is no specific averments that the date on which he visited and attempted to meet his daughter and wife. Vague averments have been made that despite all attempts, the appellant is not being given custody of his daughter. Nowhere in evidence, the appellant has stated anywhere, the date on which he visited during 5 years prior to filing of the application. On the contrary, in his cross-examination, he has admitted that he was not knowing the address of his wife, he could not visit. This evidence that he could not visit his wife because he was not knowing the address, on preponderance of probability, leads to inference that the appellant never visited his daughter nor made any serious effort to meet his daughter.

10. The application for custody of daughter was made by the appellant when the daughter was 5 years of age and at this stage, when the wife claimed maintenance from the appellant for maintaining the daughter.

11. The appellant has not disclosed any specific source of income either in

his application or in his evidence. Moreover, it is also revealed from the evidence that the respondent-wife is taking proper care of child and she has been also admitted in the school and is receiving proper education.

12. Learned Court below also interacted with the child and has clearly recorded that the daughter, when interacted, expressed her willingness to continue to reside with mother.

13. Therefore, in view of the above consideration, we do not find any good ground to interfere with the impugned judgment and decree passed by the Family Court in so far as custody of minor daughter/Ku. Somiya is concerned.

14. We find that the learned Court below has not provided any visitation rights to the appellant, who is the father of minor Ku. Somiya. Therefore, the impugned order is modified only to the extent that the appellant is entitled to proper visitation rights in the manner that the appellant may visit and meet daughter on Sunday between 11:00 a.m. in the morning to 7:00 p.m. in the evening. Further, the appellant may take the daughter for outing and excursion provided mother also accompanies.

15. The appeal is accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge

Rekha