

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 94 of 2019**

- Rajkumar Verma S/o Brijlal Verma Aged About 44 Years R/o Chhote Mudpar, Near Pond, Dongargarh, District - Rajnandgaon Chhattisgarh.

---- Appellant**Versus**

- Smt. Mana Bai Verma W/o Rajkumar Verma Aged About 39 Years R/o Ward No.2, Nakapara, Jamul, Bhilai Tahsil And District - Durg Chhattisgarh., At Present R/o Behind High School, Anusuiya Nagar, Nahar Kinare Poll No. B/21, Jamul, Post Acc Jamul, Police Station Jamul, District - Durg Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Punit Ruparel, Adv.
For Respondent	:	Mr. Rajesh Verma, Adv. and Mr. Rajkumar Sahu, Adv. on behalf of Mr. Jitendra Gupta, Adv.

DB : Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Rajani Dubey**Per: Hon'ble Smt. Justice Rajani Dubey**15.03.2021**

1. This appeal has been filed against the order dated 19.02.2019 passed by first Additional Principal Judge, Family Court, Durg (C.G.) in Misc. Civil Suit No. 02/2016 whereby the learned trial Court allowed the application of the respondent/wife filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956, and awarded Rs. 2,000/- per month as maintenance in favour of respondent/wife.

2. Brief facts of the case are that the marriage of the appellant/husband and respondent/wife was solemnized before 18 years of filing the appeal according to Hindu customs and rites. After their marriage, they started residing at Village Shivpuri, Zamul (house of the appellant) and out of their wedlock a girl child namely Kumari Durga was born.

3. Before the learned trial Court, the respondent/wife filed an application under section 18 of the Hindu Adoption and Maintenance Act, 1956 on the ground that, after some time of marriage, appellant/husband started harassing her both mentally and physically. On 30.03.2011 the appellant had committed *mar-peet* with her on the ground of his second marriage. Based on that, she filed a written complaint at the concerned police station. On December 2010, appellant kept another women with him and started living with her in rental house and left the respondent/wife and his daughter. Though, respondent/wife is unable to maintain herself and appellant is working in the N.R. Company, Chhawani Chowk and earns Rs. 12,000/- per month, as well as he has agricultural land at Village Mundpar, Dongargarh, therefore, she demanded Rs. 5,000/- per month as maintenance from her husband.

4. Appellant/husband, in his written statement, denied all the allegations levelled against him and stated that he is working as watchman in a petrol pump and his earning is only Rs. 1,000/- per month. He has no other source of income nor any agricultural land as stated by respondent/wife.

5. Learned trial Court, after appreciating oral and documentary evidence, partly allowed the application filed by respondent/wife and awarded Rs. 2,000/- per month as maintenance. Hence, this appeal filed by the appellant/husband.

6. Learned counsel for the appellant submits that the respondent/wife is living separately without any sufficient reason, therefore, she is not entitled to get maintenance from the appellant. He further contended that the respondent/wife had earlier filed an application under Section 125 of Cr.P.C. for grant of maintenance but the same was dismissed by the learned trial Court after proper appreciation of the facts and evidence. The provision of Hindu Adoption and Maintenance Act, 1956 is not applicable in the instant case for grant of maintenance to wife. Counsel for the appellant next contended that the appellant earns only Rs. 1,000/- per month, he is not in a position to give Rs. 2,000/- to his wife as awarded by the learned trial Court, therefore, impugned order being bad in law and perverse is liable to be set-aside.

7. Per contra, learned counsel for the respondent supported the impugned order passed by the trial Court.

8. Heard learned counsel for both the parties and perused the material available on record including the impugned order.

9. In the case in hand, the main objection of the appellant/husband is that when learned trial Court dismissed the application of the respondent/wife filed under Section 125 of Cr.P.C., relief in other proceedings cannot be granted to the respondent/wife. Before trial Court, the respondent/wife has stated in her cross-examination that her previous application filed under Section 125 of Cr.P.C. was dismissed by the trial Court on the ground that she is doing labour work. But this objection is baseless because appellant left his wife and her daughter and because of such abandonment by the appellant respondent/wife has to work as a labour for their livelihood. The appellant has also admitted in his cross-examination that Asha Bai is his second wife and there are three children with them. However, both the parties have not filed copy of the previous order.

10. Before the learned trial Court, Ram Sevak (NAW-3) admitted in his statement that Asha Bai is the second wife of the appellant/husband and no legal proceeding for divorce has taken place between the appellant/husband and respondent/wife. The appellant started living with Asha Bai in rental house and left the respondent/wife and his daughter without any reasonable reason. That apart, the husband is living with second wife during subsistence of the first marriage which is illegal and the relationship arising from the same does not have any validity and this sole reason has enough ground for respondent/wife to live separately.

11. As far as the income of the appellant is concerned, as per learned counsel for the appellant, he has no source of income except Rs. 1,000/- from the petrol pump, however, considering the prevailing minimum wages rate of Rs. 300/- per day which it comes to Rs. 9,000/- per month, it can easily be inferred that the applicant earns amount equivalent to the minimum wages. The Family Court had granted total maintenance of Rs. 2,000/- to his wife which

cannot be said to be disproportionate or unreasonable looking to the present price index.

12. In view of above, this Court is of the considered opinion that the order dated 19.02.2019 passed by first Additional Principal Judge Family Court, Durg being fully justified, do not call for any interference in this appeal.

13. Accordingly, this appeal has no substance and it is hereby dismissed at motion stage itself.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Rajani Dubey)
Judge