



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR.**

Criminal Revision Application No. 205 of 2023

Santosh S/o Laxmandas Vaishnav
Aged : 46 years Occp.: Labour
R/o Ward No. 11, Taranga, Taranga
Bazar, Baloda Bazar, Distt. Bhatapara
Chattisgarh - 493118.

... Applicant

- Versus -

(1) Shailendra Santosh Vaishnav,
Age 12 Years

(2) Digamber Santosh Vaishnav,
Age 10 years

Through their Mother, Smt. Mohini
W/o Santosh Vaishnav, Age - 34 Yrs
Occ. Housewife, R/o Plot No. 52,
Dipti Signal Near Railway Colony
Garden Kalamna Nagpur.

**... Non-applicants/
Respondents**

Mr. Dhiraj M. Ailani, Advocate for the applicant

Ms. Shweta P Chavhan, Advocate for the non-applicants/respondents

CORAM : ANIL L. PANSARE, J.

Date : 7-11-2023

JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith.

3. The applicant has questioned the legality, correctness and propriety of the judgment and order dated 15-4-2023 passed by the learned Principal Judge, Family Court, Nagpur in Petition No. E-332/2017 directing the applicant – husband to pay Rs. 7500/- per month each to the non-applicants – sons.

4. Having heard both sides and having gone through the impugned judgment and the record placed before me, it appears that the non-applicants, minor sons of the applicant, had filed petition under Section 125 of the Code of Criminal Procedure, 1973 (in short “the Code”). The sons appeared through their mother, a housewife. According to sons, after performing marriage in May, 2010, the applicant ill-treated their(non-applicants’) mother. The applicant was in illicit relationship with his sister-in-law. There occurred frequent quarrels between the applicant and non-applicants’ mother which constrained their mother to reside separately.

5. The non-applicants have further pleaded that non-applicant no. 1 is a special child and is advised a heart surgery by the doctors. Both the children are school going. The applicant is a businessman, engaged in sale and service of two wheeler and four wheeler vehicles. Accordingly, the non-applicants prayed for Rs. 20,000/- per month for

their maintenance and Rs. 50,000/- for heart surgery of non-applicant no. 1.

6. The applicant appeared before the Family Court and filed reply resisting the averments made by the non-applicants. According to him, he met with an accident sometimes 16 to 17 years ago and suffered injury in right hand resulting into weakness in the hand. He met with second accident two years ago and is suffering from leg fracture. He is depending upon his brother. Further pleadings were that the non-applicants' mother is an educated lady and has completed the courses of beauty parlour, sewing and stitching and is earning more than Rs. 20,000/- per month. He has further stated that treatment of non-applicant no. 1 was done at Sri Sathya Sanjeevani Hospital, Raipur by incurring limited expenses. It is a charitable hospital and surgery cannot be performed in that hospital. He has preferred petition for restitution of conjugal rights bearing HMP No. 14/2016. According to him, present petition is filed to harass him.

7. The judgment impugned indicates that the mother of non-applicants entered witness box. Her affidavit in lieu of examination-in-chief is in tune with the pleadings made in the petition, which includes the statement on oath that the applicant is a businessman and is earning

Rs. 50,000/- per month. The evidence also indicates that non-applicant no. 1 is a special child.

8. In support, she has filed on record the hospital receipt, Exhibit 33, prescriptions, Exhibit 34 collectively, patient consultation summary, Exhibit 35, agreement to sale, Exhibit 36, medical prescription and bills, Exhibit 37 collectively and school receipts, Exhibit 38. The applicant failed to cross-examine her and thus her evidence remained unchallenged. That apart, the applicant failed to enter the witness box. The matter, therefore, proceeded without his evidence.

9. The learned Family Court considering the fact that the evidence of non-applicants' mother remained unchallenged and further that the applicant did not enter witness box, found substance in the case put forth by the non-applicants. The Court disbelieved the income shown by the applicant in his affidavit of assets and liabilities wherein the applicant has stated his income to be Rs. 4500/- per month. The Family Court was of the view that the applicant by not entering witness box has concealed his income and accordingly has drawn an adverse inference against him and assessed his income to the tune of Rs. 30,000/- to Rs. 40,000/- per month. Accordingly, the Family Court

has passed the impugned order directing the applicant to pay Rs. 7,500/- per month each to his sons.

10. Learned counsel for the applicant submits that the assessment of income by the Family Court is presumptive. It is not supported by any cogent material. He further submits that the Family Court could not have travelled beyond the affidavit of assets and liabilities submitted by the applicant.

11. Learned counsel for the non-applicants has supported the impugned judgment by contending that the applicant has not cross-examined the mother of non-applicants and, therefore, her testimony is accepted. He is earning Rs. 50,000/- per month. That apart, the applicant failed to enter the witness box and, in a way, avoided to subject himself for cross-examination on the point of income. She has deposed that the applicant is indulged into illicit relationship with his sister-in-law.

12. The Family Court has noted that except for the statement made by the non-applicants' mother in her evidence that the applicant is earning Rs. 50,000/- per month, she has not placed on record any other evidence to support her claim. The Family Court has then assessed the income of the applicant to be Rs. 30,000/- to Rs. 40,000/- per month

on the ground that the applicant, by not entering witness box has concealed his true income.

13. To my mind, the finding of the Family Court that the non-applicants have not placed on record any cogent evidence on income of applicant is incorrect. The non-applicants have placed on record agreement to sale, Exhibit 36 of immovable property. The applicant appears to have entered into agreement to sale with one Sharda Goswami. The agreement has been entered into on or about 22-12-2013. The applicant has agreed to purchase the plot for Rs. 90,000/-. This evidence coupled with the unchallenged testimony of the non-applicants' mother is sufficient to prove that the applicant is earning more than what he has quoted in his affidavit of assets and liabilities. The evidence of mother further indicates that the non-applicant no. 1 is a special child. The non-applicants are school going children. The applicant is, therefore, duty bound to maintain his sons.

14. The overall evidence would justify the findings rendered by the Family Court. I do not find any reasons to interfere with the said findings in revisional jurisdiction. There is no substance in the revision application. The revision application is dismissed.

(Anil L. Pansare, J.)