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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

R.P.F.C. NO. 197 OF 2014

BETWEEN :

SRI SUNIL,
S/O RAMESH,
AGED ABOUT 42 YEARS,
R/AT D.NO.36-3-80/1,
NEAR RICE MILL, GUDDE HOUSE,
KULUR, MANGALORE - 576 201.

... PETITIONER

(BY SRI K.PRASANNA SHETTY, ADVOCATE)

AND:

NIMNISH,
SINCE MINOR
REPRESENTED BY MOTHER AND
NATURAL GUARDIAN
MRS.DEEPA,
MAJOR IN AGE,
R/AT 'SUPRIYA NIVAS',
NEAR SRI KRISHNA BHAJANA MANDIR,
MANGALORE - 576 201.

... RESPONDENT

(BY SRI.JEEVAN K., ADVOCATE)

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THIS R.P.F.C. IS FILED UNDER SECTION 19(4) OF THE FAMILY COURTS ACT CHALLENGING THE ORDER DATED 01.10.2014 PASSED BY THE FAMILY COURT, D.K., MANGALORE IN CRL.M.C.NO.44/2013.

THIS R.P.F.C. COMING ON FOR FINAL HEARING THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

Sri. K.Prasanna Shetty, learned counsel for petitioner has appeared through video conferencing.

2. The revision petition is posted for final hearing after notice to respondent.

3. For the sake of convenience, the parties shall be referred to in terms of their status and ranking before the Family Court.

4. The order dated 01.10.2014, passed by the Family Court, D.K., Mangalore in Crl.Misc.No.44/2013 is called in question in this revision petition, whereby, learned Judge has directed respondent to pay Rs.3,500/- to minor petitioner from the date of petition till he attains

majority. It is this order which is called in question on various grounds as set out in the revision petition.

5. Learned counsel Sri.K.Prasanna Shetty, submitted that the order of the Family Court suffers from serious infirmities and the same is liable to be set aside. He submitted that the Family Court has failed to appreciate the oral and documentary evidence available on record.

He submitted that learned Judge ought to have dismissed the claim petition filed by petitioner on the ground that his parents have already obtained decree of divorce.

A further submission was made that in view of the divorce, he is not obliged to maintain his son.

Lastly, he submitted that respondent is doing coolie work and is earning a meager income. Therefore, he is not in a position to pay the maintenance as ordered by the Family Court. Hence, he submitted that the order is liable

to be set aside. Accordingly, he submitted that the revision petition may be allowed.

6. I have heard the contentions urged and perused the record with care.

In the background of rival contentions, the real question to be answered is whether the excuse given on behalf of respondent - father that he is working as collie and hence, he is not able to pay maintenance is acceptable?

It is not in dispute that petitioner is the son of respondent. It is also not in dispute that his parents mutually agreed to dissolve their marriage and accordingly, they obtained a decree of divorce under Section 13 -B of the Hindu Marriage Act, 1955, on 07.03.2011 in M.C.No.9/2011. He was the under the care and custody of his mother. It has been contended that he requires huge amount for his education. Contending that his father is having sufficient means, neglected and

refused to maintain him, the minor petitioner through his guardian mother has initiated proceedings under Section 125 of Cr.P.C seeking maintenance from his father.

Learned Judge found that petitioner's mother has established that respondent has willfully neglected and refused to maintain his child.

To substantiate the claim, the mother - Smt. Deepa was examined as PW-1. She has stated that respondent is employed in NMTP as Clerk and running a shop. He is earning Rs.25,000/- per month. She has also deposed that her son is pursuing higher primary education and he requires financial support from his father. Further, she has stated that respondent is having sufficient means, but he has willfully neglected and refused to maintain his minor son.

On the contrary, respondent examined himself as RW-1. He has stated he is doing coolie (labour) work. It was stated by him that in the divorce proceedings, it was agreed by his wife - Smt. Deepa that she would not claim

any maintenance for herself and her minor son. Therefore, he is not obliged to pay any maintenance.

Learned Judge in extenso referred to the evidence on record and directed respondent to pay a sum of Rs.3,500/- per month to the minor child. In my opinion, learned Judge is justified in passing the order.

In this Court, respondent adhered to the contention that he is earning a very meager income by doing coolie work. Therefore, it is not possible for him to pay the amount as ordered by the Family Court.

This is an interesting case to address the question whether a father can shirk his responsibility from maintaining his minor son under the garb of doing Coolie job.

It's no secret that being a parent is one of the most challenging roles in the world. The relationship between a parent and their child is a unique bond that nurtures the holistic growth and development of a child. It lays the

foundation for their behavior, personality, traits and values.

Strengthening the parent-child relationships requires work, mutual understanding and efforts. Parenting is a tough job, but by maintaining a close relationship and open communication with your children, parents can stay connected to them during all stages of life.

A Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents, whether he possess any property or not. The obligation to maintain these relations is personal, legal and absolute in character and arises from the very existence of the relationship between the parties.

It is needless to observe that a father is under a personal obligation to maintain his minor child. Hence, factors like unemployment, earning a meager income can't be an excuse for not maintaining wife and children. He cannot shirk his responsibility from maintaining the family,

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in particular, his minor son under the garb of doing a coolie job.

It is perhaps well to observe that the power to make an order under Section 125 of Cr.P.C is discretionary. This Court find it necessary to say only this much that High Court in exercising its revisional powers should not interfere with the discretion of a Judge acting within his jurisdiction unless the Court is clearly satisfied that he was wrong.

In the present case, respondent has not satisfied the onus of showing that the discretion of the Judge had been wrongly exercised. A Judge's order granting maintenance is a typical exercise of purely discretionary powers, and would be interfered with by the High Court only in exceptional cases.

In the last resort, Sri.K. Prasanna Shetty submitted that petitioner has attained the age of majority and hence, respondent is not liable to pay any maintenance to him.

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In this regard, it would be relevant to note that, the claim for grant of maintenance allowance was made in the year 2013 when the son was studying in 8th standard. The order is made in the year 2014. The revision petition is filed in the year 2014. Had the father agreed to the amount as ordered by the Family Court, his own son would have used the said amount for his own education and had come up in his life holding a better position in the society.

It would have also resulted in re-establishment of relationship between father and son.

In the result, I find no reason to interfere with Judge's order. Hence, the respondent is directed to pay the maintenance to his minor son as ordered by the Family court till the age of his attaining the majority.

7. With these observations, the revision petition stands ***dismissed***.

Sd/-
JUDGE

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