NC: 2023:KHC-K:9248
RPFC No. 200091 of 2023

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 15TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

REV.PET FAMILY COURT NO.200091 OF 2023

BETWEEN:

SRI WAJID AHMED
S/O LATE SYED AMIR AHMED, LATE
AGED ABOUT 54 YEARS,
OCC: SERVICE IN KHAJA BANDANAWAZ DARGAH
ROZA (B), KALABURAGI-585104.

…PETITIONER

(BY SRI LIYAQAT FAREED USTAD AND
SRI MAHMOOD PATEL, ADVOCATES)

AND:

1. REHANA FATHIMA
AGED ABOUT 47 YEARS,
W/O WAJID AHMED,
OCC: HOUSEHOLD

2. SHAMAMA BUTUAL
NOW AGED ABOUT 24 YEARS,
D/O WAJID AHMED,
OCC: STUDENT
NOW IN SERVICE,

BOTH RESIDENT OF HOUSE NO.11-1041/341/8/10,
IQBAL COLONY, JEELANABAD,
KALABURAGI-585104.

…RESPONDENTS

(BY SRI SYED FAYAZUDDIN, ADV. FOR R1 AD R2)

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

THIS RPFC IS FILED U/S. 19(4) OF THE FAMILY COURTS ACT, PRAYING TO CALL FOR RECORDS IN CRL.MISC NO.215/2019 FROM THE COURT OF THE PRINCIPAL JUDGE, FAMILY COURT, KALABURAGI AND SET ASIDE THE IMPUGNED ORDER PASSED IN CRL. MISC NO.215/2019 DATED 15TH JUNE 2023 BY THE COURT OF THE PRINCIPAL JUDGE, FAMILY COURT, AT KALABURAGI IN THE INTEREST OF JUSTICE.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Though the matter is listed for admission, with the consent of learned counsel for the parties, it is taken up for final disposal.

2. The parties are referred to as per their ranking before the Trial Court

3. The respondent In Crl.Misc.No.215/2019 on the file of the Principal Judge, Family Court at Kalaburagi is impugning the order dated 15.06.2023, allowing the petition in part and awarding monthly maintenance of Rs.6,000/- to petitioner No.1 being the wife of the respondent.

4. Brief facts of the case are that petitioner No.1 has filed Crl.Misc.No.4/2003 under section 125 of Cr.P.C. seeking maintenance. Subsequently, several petitions were filed under

Section 127 of Cr.P.C. seeking enhancement of the maintenance awarded initially in Crl.Misc.No.4/2003. In Crl.Misc.No.66/2015, the maintenance was enhanced to Rs.3,500/- during the year 2017. Petitioner No.1 being the wife and petitioner No.2 being the daughter filed Crl.Misc.No.215/2019 under Section 127 of Cr.P.C. seeking further enhancement. The matter was contested by the respondent/husband. Initially, the Trial Court awarded maintenance of Rs.4,500/- to petitioner No.1 and Rs.3,000/- to petitioner No.2. Thus, in all Rs.7,500/- was ordered to be paid by the respondent. Being aggrieved by the same, respondent had preferred RPFC No.200019/2022 and the petitioners have also challenged the order by preferring RPFC No.200002/2022 before this Court. The Coordinate Bench of this Court considered both the petitions and passed the common order holding that petitioner No.2 being the daughter, who is completed her decree as Bachelor of Engineering and gainfully employed, she is not entitled for maintenance from the respondent. However, taking into consideration the fact that the husband is getting net salary of Rs.11,500/- per month, remitted the matter back to the Trial Court for fresh

consideration. On remanding the matter, the Trial Court once again tried the matter and considered the materials on record, passed the impugned order, enhancing the maintenance to be paid to petitioner No.1 from Rs.3,500/- per month to Rs.6,000/- per month. Being aggrieved by the same, the respondent is before this Court.

5. Heard learned counsel Sri Mahmood Patel for the petitioner/husband and learned counsel Sri Syed Fayazuddin for the respondents/wife and daughter.

6. Learned counsel for the petitioner contended that the petitioner is working in a Dargah and his net salary is only Rs.11,500/- per month. The salary certificate is produced as per Ex.R1. He further submitted that petitioner No.1 before the Trial Court is the divorced wife. After divorce, the respondent married for the second time and had begotten three children. Therefore, he is having five dependents i.e., three children, one wife and the mother to be looked after and under such circumstances, he is not in a position to pay monthly maintenance of Rs.6,000/- to petitioner No.1. The Trial Court even though considered the fact that the respondent/husband

is only earning Rs.11,500/- per month, proceeded to enhance the maintenance to Rs.6,000/- per month without any basis. Therefore, he prays for allowing the petition and to dismiss Crl.Misc.No.215/2019 in the interest of justice.

7. Per contra, learned counsel for the respondents/wife and daughter opposing the petition submitted that admittedly since from 2003, the respondent is refusing to maintain his wife and daughter. Several petitions were required to be filed and as per the order of the Court, the respondent was compelled to pay paltry sum towards their maintenance. However, this Court in RPFC No.200019/2022 connected with RPFC No.200002/2022 held that petitioner No.2 is not entitled for maintenance. Thereafter, the Trial Court once again considered the materials on record and enhanced the maintenance from Rs.3,500/- per month to Rs.6,000/- to petitioner No.1. The petitioners have produced Exs.P3, P4 and 23 – medical records, which disclose that the wife is suffering from various ailments and she consistently under treatment. He further contended that the respondent/husband is an advocate by profession and he is an able bodied person. He never divorced petitioner No.1. Considering all these facts and

circumstances, the Trial Court rightly enhanced the maintenance to Rs.6,000/- per month to petitioner No.1, which is fair and reasonable and there is no reason to interfere with the same. Hence, he prays for dismissal of the petition.

8. Perused the materials on record. In view of the rival contentions urged by learned counsel for the parties, the point that would arise for my consideration is:

> *"Whether the impugned order passed by the Trial Court suffers from any perversity or illegality and calls for interference by this Court?"*

My answer to the above point is in 'Negative' for the following:

REASONS

9. Even though learned counsel for the petitioner contended that the respondent/husband had already divorced petitioner No.1, no materials are placed before the Court in support of the same. The said fact is seriously disputed by learned counsel for petitioners. The admitted fact is that petitioner No.1 and respondent were married and have

begotten a daughter, who is now attained majority, completed her degree om Bachelor of Engineering and gainfully employed. The Trial Court has rightly rejected her claim for maintenance.

10. It is stated that respondent is working in Dargah and getting salary of Rs.11,500/- per month. It is contended by the petitioners that the respondent is a law graduate and he is practicing as an advocate, but, no satisfactory documents are placed before the Court to show that he is practicing and earning his income. However, the respondent is a law graduate is not disputed.

11. Now the question arises as to whether petitioner No1/wife is entitled for enhancement of maintenance amount. Admittedly, during the year 2017, the Trial Court had enhanced the maintenance to RS.3,500/- per month as per the order passed in Crl.Misc.No.66/2015. It is the contention of petitioner No.1 that she is residing in a rented house and is suffering from diabetes. In view of increasing in the price, she is in need of enhanced maintenance. The Trial Court in the absence of any material rejected the claim of the petitioner No.1 that she is residing in a rented house. However, it

accepted Exs.P4, P5 and, P23, which disclose that petitioner No.1 is continuously taking treatment for her ailments. It is also held that in view of increase in the cost of living and in view of compelling medical expenses, the maintenance is required to be enhanced to Rs.6,000/- per month to petitioner No.1. I do not find any illegality or perversity in the said finding.

12. The contention of the respondent is that since he married for the second time and had begotten three children, now he has to maintain five dependents and therefore, his salary of Rs.11,500/- is not sufficient to maintain his own family and also petitioner No.1. The said contention of the respondent cannot be accepted. When he admits that petitioner No.1 is his wife, it is his responsibility to maintain her. The respondent is a law graduate is not in dispute. Under such circumstances, he has taken a conscious decision to marry for the second time and had begotten three children. Therefore, he was aware of his responsibilities and the income which was he getting when he got married and begotten children. Now he cannot turn around and contend that he is unable to maintain his wife with his limited source of income.

13. I have gone through the impugned order passed by the Trial Court. It has taken into consideration the facts and circumstances and arrived at a right conclusion. The reasons assigned by the Trial Court for enhancing the maintenance to Rs.6,000/- per month is just and proper. I do not find any reason to interfere with the same. Hence, I answer the above point in the Negative and proceed to pass the following:

ORDER

(i) The revision petition is ***dismissed*** with costs.

(ii) The order dated 15.06.2023 passed in Crl.Misc.No.215/2019, on the file of the learned Principal Judge, Family Court at Kalaburagi, is hereby confirmed.

Sd/-
JUDGE

SRT
CT-VD
List No.: 1 Sl No.: 12