

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 600 of 2015

1. Lakhnu Verma, S/o Tetku Singh, aged about 22 years, R/o Village Bahunwagaon, Tahsil Bemetara, Civil & Revenue District Bemetara (Chhattisgarh)

---- Petitioner

Versus

1. Gayatri Bai, W/o Lakhnu Verma, aged about 20 years, R/o Care of Mohit Ram Verma, Dabrapara, Bhilai-3, Tahsil Patan, District Durg (CG)

---- Respondent

For Petitioner:
For Respondent:

Shri P.P. Sahu, Advocate.
Shri A. Singh, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

07/12/2015

1. In the maintenance proceedings initiated by the respondent-wife under Section 125 of Cr.P.C., vide ex-parte order dated 4.4.2012 the family Court is said to have awarded maintenance at the rate of Rs.1,200/- per month to respondent-wife from the date of filing of application. The petitioner herein filed an application under Section 126 (2) of Cr.P.C. for setting aside the ex-parte order dated 4.4.2012 and granting him an opportunity of hearing and adducing evidence. The Court below vide order impugned dated 7.4.2015 rejected the said application holding that the petitioner has failed to show good cause for setting aside the ex-parte order. It has been further observed by the Court below that false ground has been taken by the petitioner that the amicus curiae appointed to defend him did not inform about the date of hearing, whereas no such amicus curiae has been appointed.

2. Counsel for the petitioner submits that this revision may be treated as mercy petition otherwise on factual aspects perhaps the petitioner may not have a good case. He further submits that only thing which the petitioner wants is that he may be given an opportunity so that he can also put forth his defence. The petitioner has already paid an amount of Rs.13,000/- to the respondent-wife and is further ready to pay remaining amount to her. The petitioner is also ready to pay suitable cost.
3. On the other hand, counsel appointed by this Court to defend the respondent submits that as the maintenance awarded by the Court below is on the lower side therefore a direction may be issued to the Court below for enhancing the same suitably. He further submits that the petitioner may also be directed to pay cost of litigation of the Court below.
4. Heard counsel for the parties and perused the material on record.
5. True it is that no amicus curiae was appointed and an incorrect submission was made by the petitioner before the Court below. However, taking into consideration the entire facts and circumstances of the case, this Court is of the view that it would be in the interest of justice if the ex-parte order dated 7.4.2015 is set aside and the matter is remitted back to the Court below for taking decision afresh after providing opportunity of leading evidence to the petitioner herein. Accordingly, the revision is partly allowed. Order dated 7.4.2015 is set aside and the petitioner's application filed under Section 126 (2) of Cr.P.C. is allowed, subject to following conditions;-
 - a) the petitioner shall deposit the entire arrears of maintenance amount. He shall also deposit cost of Rs.10,000/- (Rupees Ten Thousand only) before the Court below.

- b) the petitioner will appear before the Court below concerned on 4.1.2016.
 - c) the family Court, after issuing notice to the respondent-wife, shall proceed with the case from the stage where it has proceeded ex-parte against the petitioner. The Court below will make all its endeavour to dispose off the matter expeditiously, preferably within a period of three months from 4.1.2016.
 - d) during the pendency of proceedings before the Court below, the petitioner shall continue to pay Rs.1,200/- per month to the respondent-wife, until & unless otherwise directed.
 - e) If the petitioner fails to appear before the Court below on any date of hearing without any sufficient cause, the Court below shall be at liberty to proceed ex-parte against him.
6. It is made clear that if any of the above conditions is violated by the petitioner, this order would lose its efficacy.
7. Needless to mention here that nothing in this order shall be construed as an expression of opinion on merits of the case and the Court below to decide the case on its own merit strictly in accordance with law.

Sd/-
(Pritinker Diwaker)
Judge

roshan/-