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HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No.560 of 2015**

Sushil Jotwani, son of late Tirathdas Jotwani, aged about 34 years, R/o. Main Road, Charama, Post Office, Police Station & Tahsil Charama, District Kanker (CG)

---- Applicant

Versus

Smt. Kashish @ Manisha Jotwani, W/o. Shri Sushil Jotwani, aged about 28 years, D/o. Sadhura Valrayani, R/o. First Floor, Sushil Traders, Main Road, Charama, Post Office, Police Station & Tahsil Charama, District Kanker (CG) and through Sadhura Valrayani, whole and retail seller of Bardana, Amapara Chowk, Dhamtari, Tahsil and District Dhamtari (CG)

--- Respondent

Shri Sunil Otwarni, counsel for the applicant.
None for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order****12/10/2015**

This order shall dispose of the instant MCC filed for recalling order dated 18.6.2015 passed by this Court in Transfer Petition (C) No.20/2015 (Smt. Kashish @ Manisha Jotwani vs. Sushil Jotwani) filed under Section 24 of the Code of Civil Procedure, 1908, whereby and whereunder this Court ordered that Civil Suit No.23A/2014(Sushil Jotwani vs. Smt. Kashish @ Manisha Jotwani) pending before the Court of Judge Family Court, Kanker District Kanker (CG) be withdrawn and transferred to Judge Family Court, Dhamtari, District Dhamtari (CG).

2. By filing the instant MCC, the applicant submitted that as per the notice duly issued (Annexure-A/2) to the applicant, he was required to remain present before the Court either in person or through counsel on 23.6.2015. When he received the notice, he enquired about the matter

i.e. transfer petition (Civil) 20/15, he came to know that the said petition was disposed of vide order dated 18.6.2015 after recording the service of notice by both the mode to the respondent and his non representation in the matter. It is submitted that the applicant was required to appear and assail aforementioned transfer petition (civil) on 23.6.2015, though notice were served to him prior to 18.6.15, but he was not given an opportunity to assail the petition on its merits by making submission for the facts and other material. The order was passed without affording an opportunity for hearing to applicant and further prayed that order passed in Transfer Petition (Civil) No.20/15 dated 18.6.15 may be recalled and matter be heard afresh and thereafter order be passed after affording opportunity of hearing both the parties.

3. The respondent of the instant MCC is deemed served with the notice as she refused to accept the notice, hence, there is no representation of the respondent in the matter thereby no any material in rebuttal before the Court.

4. Heard learned counsel for the applicant. Learned counsel for the applicant duly supported the petition and submitted that as per the settled law, he be given an opportunity to be heard before passing any order in the transfer petition (C) No.20/15 and as the order passed before the date so fixed for his appearance, he be given opportunity of hearing, hence, order dated 18.6.15 may be recalled and the same may be restored for hearing of both the parties and after hearing of the parties, order may be passed.

5. To appreciate the arguments advanced on behalf of the applicant, I have perused Annexure-A/2, which shows that present

applicant was noticed for his representation in the matter (TPC No.20/15) and he was required to appear before the High Court on 23.6.2015, which goes to show that he had given specific date for his representation in the matter either in person or through his counsel on 23.6.15. Order passed by this Court on 18.6.15 goes to show that before the date so fixed for the representation of the respondent in transfer petition, the matter was listed for hearing and the same was disposed of without providing a lawful opportunity for hearing to the present applicant/respondent in TPC No.20/15. As per the settled principle of law, appropriate opportunity of hearing has to be given to the applicant on date so fixed i.e. 23.6.2015 and after hearing both the parties, the matter was required to be disposed of.

6. On bare perusal of Annexure-A/2, copy of the notice, and the order passed by this Court, in the considered view of this Court, impugned order dated 18.6.2015 is required to be recalled. Consequently, order dated 18.6.2015 passed in TPC No.20/15 is hereby recalled and the same is restored to its original number. The parties are directed to remain present for hearing either in person or through their counsel on 08.12.15.

7. A copy of this order be sent to the Judge Family Court, Dhamtari and Judge Family Court, Kanker for information and compliance. Judge Family Court, Dhamtari is directed to return Civil Suit No.23-A/2014 (Sushil Jotwani vs. Smt. Kashish @ Manisha Jotwani) to the Judge Family Court, Kanker, immediately.

8. The Registry is directed to issue notice to the applicant in the TPC No. 20/15 to appear in person or through her counsel informing

that the said TPC has been restored for fresh hearing as the said order dated 18.6.15 is recalled.

9. Registrar (Judl.) is directed to hold an enquiry as to why the matter was listed for hearing before 23.6.2015 without any note regarding the fact that the present applicant was served with notice for his appearance on 23.6.2015 and take appropriate administrative action against the erring official.

10. The instant MCC is allowed. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE