

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.174 of 2016**

Vivek Pratap Khute S/o Shir Bhojram Khute Aged About 24 Years (Wrongly Mentioned As 44 Years In The Cause Title Of Impugned Order), Caste Suryawanshi, R/o Village Chouha, Post Office, Police Station & Tahsil Masturi, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Smt. Alija Khunte W/o Vivek Pratap Khunte Aged About 23 Years Caste Satnami, R/o Village Kurud, Post Office & Chowki - Silyari, Police Station & Tahsil Dharsinwa, District Raipur Chhattisgarh.
2. Ku. Anjelika D/o Vivek Pratap Khunte Aged About 1 Years Minor Represented Through Mother Smt. Alija Khunte, Caste Satnami, R/o Village Kurud, Post Office & Chowki - Silyari, Police Station & Tahsil Dharsinwa, District Raipur Chhattisgarh.

---- Respondents

Shri Bharat Rajput, counsel for the petitioner.
Respondents not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****09.02.2016.**

Heard.

2. It is prayed on behalf of the petitioner that looking to the entire facts and legal provisions as contained in the proviso of Section 13 of the Family Courts Act, 1984 (for short 'the Act of 1984) and also for the fact regarding closing of right petitioner/non applicant to cross examine the respondent/applicant's witnesses at the first instance and with the fact that the matter is still pending before the Court below for petitioner's/non applicant's evidence, the matter may be disposed of finally without even noticing to the respondent at the motion stage itself.

3. On due consideration, on perusal of the entire facts, in the considered view of this Court, issuance of notice to the respondent is not necessary, hence, the matter is heard finally at the motion stage itself.

4. Brief facts for the disposal of the instant petition are that the respondent filed an application under Section 125 of the code of Criminal Procedure, 1973 (for short 'the Code') before the Principal Judge Family Court, Raipur registered as Case No.676/14 is presently pending before First Additional Principal Judge, Family court Raipur. On 23.11.15 both the parties informed the court regarding no any compromise between the parties and on 01.12.2015 when the matter was first time listed for evidence of the parties the petitioner/non applicant prayed for an opportunity to adjourn the case as his counsel was not available for the moment to defend him. The Court below held that since there is no order for appointment of *amicus curie*, rejected the prayer and thereafter closed the right of the non applicant/petitioner to cross examine the witnesses of the applicant/respondent and fixed the case for evidence of petitioner/non applicant. Against the said order, the petitioner had filed instant petition invoking the jurisdiction of Section 482 of the Code inherent power of this Court and prayed that order dated 01.12.2015 be set aside in the interest of justice.

5. Heard counsel for the petitioner on admission.

6. Learned counsel for the petitioner submits that when the case was listed for first time before the Court below for the evidence, the petitioner/non applicant who is unemployed and not aware of the proceedings of the Court below requested a lawyer from Bilaspur to defend him in the matter. On account of some difficulties, the counsel from Bilaspur could not reach before the Family Court at the time of hearing of the matter, then the petitioner/non applicant prayed for adjournment which was denied. As the petitioner/ non applicant has not misused the process of law, a short opportunity would have been granted to him for filing any application under the proviso of Section 13 of the Act 1984 for assistance of legal expert as *amicus curie* in the matter. It is further submitted that the petitioner may be given opportunity for the same including the opportunity to cross examine the witnesses of the applicant/respondent.

7. For the purposes of appreciation regarding arguments advanced, the facts and ground mentioned in the instant petition and the documents are perused.

8. On perusal of the copy of the order sheet goes to show that as there is no settlement arrived between the parties on 23.11.2015, the matter was fixed for the first time for evidence on 01.12.15. On the same day, the petitioner/non applicant prayed for opportunity but the Court below without granting him even short opportunity closed his right to cross examine the applicant's witnesses. Though in a matter under Section 125 of the Code the

Courts are required to dispose of the matter as expeditiously as possible, on the same time reasonable opportunity are required to be given to the parties so as to award them due opportunity to hear as they are not aware of the proceedings of the Court specially the Family Court.

9. On due consideration, this Court is of the view that without awarding short opportunity, the Court below committed an error which requires interference. Consequently, impugned order of the Court below dated 01.12.2015 is hereby set aside. The petitioner is directed to file an application under Section 13 of Act 1984, if he so desire, regarding assistance of the legal expert as amicus curie and if any application is filed in this behalf, without any further delay, the court below is directed to dispose of the same after hearing both the parties as expeditiously as possible. The trial Court is also directed to award a reasonable opportunity so as to enable the petitioner/non applicant to cross examine the witnesses of the applicant either by himself or if permitted with the help or assistance of legal expert in the matter. The petitioner may file a copy of this order before the Court below for compliance. Registry of this Court is also directed to send a copy of this order to the Court below for compliance. Petition allowed. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE