**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 269 of 2016**

Pravin Kumar Kedia S/o Shri Kailash Nath Kedia, Aged About 37 Years R/o V- 801, Sai Simran, Co- Operative Hosing Society Limited, Near Metal Box, Devnaar, Mumbai, (Maharashtra) Address Of Office- Senior Big Data And Information Architect, I.B.M. India Pvt. Ltd., Fourth Floor, I.L. And F.S. Financial Center Plot C - 22, Bandra Kurla Complex, Bandra West, Mumbai (Maharashtra)- 110051.............(Non Applicant)

**---- Petitioner**

**Versus**

1. Smt Sweta Kedia W/o Shri Pravin Kumar Kedia, Aged About 34 Years D/o Shri A.K. Goenka, R/o Through Shri A.K. Goenka, 275. Samta Colony, Raipur, Tahsil & District Raipur (Chhattisgarh) (Applicant 1)
2. Shri Kinshuk Kedia S/o Shri Pravin Kumar Kedia Aged About 7 Years (Respondent No. 2 Being Minor On Behalf Of Through His Legal Guardian Mother Smt. Sweta Kedia Respondent No. 1), D/o Shri A.K. Goenka, R/o Through Shri A.K. Goenka, 275. Samta Colony, Raipur, Tahsil & District Raipur (Chhattisgarh) (Applicant 2)

**---- Respondents**

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| For Petitioners | : | Mr. Shivendu Pandya, Advocate. |
| For Respondents | : | Not noticed. |

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**Order On Board**

**04/05/2016**

1. Heard on admission.
2. Facts in brief require for disposal of instant writ petition are that Case No. 569/2014 is pending before the 2nd Additional Principal Judge, Family Court, Raipur wherein the present petitioner/no-applicant and respondents/applicants are contesting party. This Court while hearing the matter in Criminal Revision No. 521/2015 and Criminal Revision No. 623/2015 vide order dated 7-10-2015 in para 12 directed the trial court to conclude the maintenance proceeding finaliy within a period of three months from the date of receipt and/or production of certified copy of the order. The present petitioner filed an application before the trial Court under Order 16 Rule 1 of the Code of Civil Procedure, 1860 (in brevity 'CPC') for calling concerned employee/officer of the Income Tax Department to prove the income tax return filed every year by the

respondents/applicants. Court below after hearing the matter bi-party held that the applicant No. 1/wife had filed income tax return before the Income Tax Department for the year 2011-12 till 2014-15 and also she had filed copy of the income tax return in relation to financial year 2012-13, 2013-14, 2015-16 and also copy of income tax return for the year 2014-15 and 2006-07 and held that as copy of the income tax return of the year for which the application for maintenance is filed is already on record i.e. for the year 2014-15, there is no necessity to call for any employee of the income tax department for evidence. The trial court also observed that as per order dated 2-2-2016 passed by this Court, the matter has to be disposed of within a period of 3 months and thereby dismissed the said application filed under Order 16 Rule 1 of the CPC. Against the said order the petitioner has filed present writ petition wherein the grounds taken are that they have not received any copy of the income tax return and the court below wrongly mentioned about filing of copy of income tax return in the matter. Hence instant writ petition may be allowed and the order passed by the trial Court dated 5-4-2016 may be quashed.

3. Learned counsel for the petitioner supported the grounds taken in the writ petition and submitted that the trial Court has mentioned wrong facts. In fact they have not received copy of the said income tax return and calling for the witnesses from the income tax department would be necessary hence the impugned order dated 5-4-2016 be quashed and the applicant be permitted to call for the witnesses from the income tax department to show the income of the respondent.

4. From perusal of the order dated 5-4-2016 and also the reply filed by the respondents before the trial Court to application under Order 16 Rule 1 of the C.P.C. it appears that categorically in para 3 of reply, it is mentioned that copy of income tax return since 2011-12 till 2014-15 is already filed in the case. Court below very specifically and by giving detailed facts for presentation of copy of the income tax return appreciated those facts and held that copy of the return of income tax is already on record, the High Court directed for early disposal of proceedings, hence there is no necessity to call for any witness from the income tax department. From the material enclosed by the

petitioner himself and from perusal of the order of the trial Court it cannot be held that the court below wrongly mentioned regarding presentation of copy of income tax return. On due consideration I do not see any illegality, impropriety or incorrectness in the impugned order, also the trial Court is trying to comply with the orders passed by this Court to disposal of the matter expeditiously.

5. On due consideration, the petitioner failed to demonstrate that rejection of his application under Order 16 Rule 1 of the C.P.C. is wrong. I am not inclined to interfere with the impugned Order passed by the court below.

6. Consequently instant writ petition is dismissed at motion stage itself as not maintainable.

7. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Pathak