

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1143 of 2015**

Manish Umbarkar S/o Late Basant Ram Umbarkar Aged About 35 Years R/o Shastri Ward Govindpur, Gondia, (Maharashtra) Present Address 1/91, Mohite Plot, Lahan Usari, Akola, Tah. & Distt. Akola (Maharashtra).

---- Applicant

Versus

1. Vinita Umbarkar W/o Manish Umbarkar Aged About 31 Years Presently R/o E W S -55, Padhnabhput, Durg, Tah. & Distt. Durg (Chhattisgarh)
2. Vedant Umbarkar S/o Manish Umbarkar Aged About 2 Years 6 Months, Through Her Mother Vinita Umbarkar W/o Manish Umbarkar, Presently R/o E W S -55, Padhnabhput, Durg, Tah. & Distt. Durg (Chhattisgarh)

---- Respondents

For Applicant	:	Shri Shrawan Agrawal, Advocate.
For the Respondents	:	Shri Amrito Das, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****09/02/2016**

1. At the outset, Learned counsel for the Applicant submits that as the Applicant is a resident of Maharashtra and he does not know the limitation laws and the period of limitation for filing of the application under Section 126 sub-section (2) of the Code of Criminal Procedure, 1973 (for short 'the Code'), he filed the said application after three months of the passing of the order dated 27.6.2015. The said application filed to set aside the *ex parte* order dated 27.6.2015 is barred by 20 days of limitation. As he does not know the procedure of law, he failed to file an application under Section 5 of the Limitation Act in support of his application to set aside the *ex parte*. The Applicant be afforded an opportunity of being heard afresh and for filing an application under Section 5 of the Limitation Act, and the Court below may

be directed to dispose of the matter after hearing both the parties without being influenced by the order dated 19.10.2015.

2. Per contra, Learned counsel for the Respondents submits that the Court below may be afforded an opportunity of hearing to the Applicant on the application under Section 126 sub-section (2) of the Code filed for setting aside the *ex parte* order alongwith the application under Section 5 of the Limitation Act after depositing the outstanding maintenance amount either in the Court or after making payment of the same to the Respondents.

3. From perusal of the order-sheet dated 19.10.2015, it appears that the Applicant has not filed any application under Section 5 of the Limitation Act in support of his application under Section 126 sub-section (2) of the Code and his application for setting aside the *ex parte* order is barred by limitation for about 20 days.

4. As per the facts of the case, the Applicant is a resident of Maharashtra. He is working in the Government ITI, Gondia and imparting Computer Training in the ITI and as such he may not be aware of the limitation part to challenge the impugned order dated 27.6.2015 passed in MJC No. 305 of 2014. Therefore, it would be appropriate to afford an opportunity of hearing to the Applicant on the application under Section 126 sub-section (2) of the Code alongwith the application under Section 5 of the Limitation Act and to direct him to deposit the arrears of maintenance amount as ordered before hearing of the said application.

5. On due consideration, the Applicant is directed to file an application under Section 5 of the Limitation Act for condonation of delay in filing the application under Section 126(2) of the Code. If such an application is filed alongwith the proof of deposit of amount of maintenance as per order dated

27.6.2015 in M.J.C. No. 305 of 2014 either in the Court or making payment of the sum to the Respondents, the Court below shall hear the matter afresh in light of the application filed under Section 5 of the Limitation Act without being influenced by the order dated 19.10.2015. Needless to mention that if no application under Section 5 of the Limitation Act is preferred alongwith the proof of deposit of amount of maintenance as per order dated 27.6.2015, the order dated 19.10.2015 shall remain in force.

7. The criminal revision is disposed.

Sd/-

Chandra Bhushan Bajpai
Judge