

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.908 of 2015**

1. Smt. Seema Kurre D/o Bihari Lal Manhar Aged About 25 Years
2. Svyam Kurre (Minor) S/o Manoj Kurre Aged About 6 Years Through Legal Guardian Mother Smt. Seema Kurre,

Both are R/o Azad Nagar, Godripara, Chirmiri, Police Station Chirmiri, District Korea Chhattisgarh.

---- Applicants

Versus

1. Manoj Kumar Kurre S/o Babulal @ Mayaram Aged About 28 Years
2. Smt. Teerath Bai W/o Babulal @ Mayaram Aged About 45 Years
3. Babulal @ Mayaram S/o Rajaram Aged About 46 Years

All non-applicants are R/o New Minus Quarter, Chhoti Bazar, Chirmiri, Police Station Chirmiri, District Korea Chhattisgarh.

---- Respondents

For Applicants
For Respondents

Shri Sanjeev Verma, Advocate.
Shri NK Chatterjee, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/11/2016

1. The present revision under Section 397 read with Section 401 of CrPC has been filed assailing the judgment dated 28.07.2015 passed by the Second Additional Sessions Judge, Manendragarh, Korea, in Criminal Appeal No.83/2013.
2. The facts in brief is that, the applicants herein had initiated a proceeding against the respondents herein under Section 12 of the Domestic Violence Act, 2005 before the JMFC, Chirmiri, where the case was registered as Misc. Criminal Case No.38/2013. The JMFC, Chirmiri finally decided the matter on 21.10.2013 allowing the application and

ordering that the applicants herein shall be entitled for maintenance amount of Rs. 3000/- per month. The said order dated 21.10.2013 was put to challenge by the respondents herein before the Second Additional Sessions Judge, Manendragarh, where the case was registered as Criminal Appeal No.83 of 2013. The applicants herein had engaged one Shri Virendra Shrivastava as their lawyer for contesting the case on merits. However, from the record it appears that on 22.07.2015, the said lawyer expressed his inability to contest the matter on behalf of the applicants and in the light of the said statement made by the lawyer, the court below proceeded ex parte against the present applicants and passed the impugned order.

3. Learned counsel appearing for the applicants submits that the applicants had never instructed the said lawyer Shri Virendra Shrivastava to plead no instructions in the matter nor was the said statement made by the lawyer with their consent or knowledge. Even if the lawyer had expressed his inability to defend the applicants before the court below, the court below taking into consideration the nature of dispute ought to have issued a fresh notice to the applicants so that they could have made an alternative arrangement for defending their case before the court below. According to him, by the said proceeding of ex parte against the applicants, the court below without hearing the version of the applicants has passed the final order reversing the order passed by the JMFC in their favour. In case if the applicants are not permitted to contest the case on merit, the same shall be detrimental, and therefore, a prayer has been made to remit the matter back to the

lower appellate court, who in turn may consider the contentions and submissions of the applicants and thereafter shall pass a fresh order.

4. The limited prayer of the applicants for remitting back the matter for fresh adjudication is not opposed by the respondent's counsel. However, it is submitted that in the event if the matter is remitted back, the court below may be directed to decide the case within a stipulated period.
5. Taking into consideration the facts and circumstances of the case, this Court is of the opinion that the limited prayer made by the applicants is quite fair and the same deserves to be and is accordingly allowed. The impugned ex parte order dated 28.07.2015 is therefore set aside and the matter is remitted back to the lower appellate court i.e. Second Additional Sessions Judge, Manendragarh to rehear the Criminal Appeal No. 83 of 2013 on its own merits after affording proper opportunity of defending their respective claim.
6. It is directed that the appellate court shall issue fresh notice to the parties, who in turn shall appear either personally or through their counsel, and thereafter the court below shall proceed to decide the matter afresh in accordance with law.
7. With the aforesaid observations, the revision petition stands disposed of.
8. Registry is directed to ensure that the records be sent back to the concerned court below at the earliest.

Sd/-

(P. Sam Koshy)
Judge