

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 149 of 2016

- Sarju Baghel S/o Manak Baghel Aged About 43 Years R/o Village Mudhpar, P.S. And Tahsil Berla, Civil And Rev. District Bemetara Chhattisgarh.

---- Applicant

Versus

- Smt. Nirmala W/o Sarju Baghel Aged About 25 Years R/o C/o. Narayan Patre, Village Pitoura, P.S. Ahirwara, Civil And Rev. District Durg Chhattisgarh.

---- Respondent

For Applicant	:	Mr. C.R. Sahu, Advocate
For Respondent	:	Mr. Basant Kaiwartya, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2016

1. The present Petition has been filed assailing the order dated 02.01.2016 passing in Miscellaneous Criminal case No. 294/2015 by the First Additional Principle judge, Family Court, Durg as also ex-parte order dated 13.02.2015 passed in the Miscellaneous' Criminal Case No. 69/2015 passed by the same Court.
2. Vide the order dated 13.02.2015 the Court below has in a proceeding under Section 125 Cr.P.C. proceeded ex-parte without the presence of the present petitioner (non-applicant before the Court below) and passed the award dated 13.02.2015 allowing the application under Section 125 Cr.P.C. and directing the present Petitioner to pay Rs. 4000/- per month from the date of filing of the application under Section 125 Cr.P.C. i.e. 22.02.2014 onwards. Immediately after the said order was passed, in

justabout three months time the applicant had filed an application for setting aside of the ex-parte order under Section 126(2) of the Cr.P.C. on 27.5.2015 however the Court below vide the impugned order dated 02.01.2016 had rejected the said application and maintained the order dated 13.02.2015, leading to the filing of the present Revision Petition.

3. At the outset learned Counsel for the Applicant submits that he does not intend to contest the case on merits on the sole ground the order passed by the Court below has been fully complied with and the Petitioner has paid the maintenance amount as have been awarded by the Family Court. He only makes a limited prayer that the matter may be remitted back to the family Court so that he may get an opportunity of putting his defence before the family court and also intun shall decide the same on its merits.
4. Mr. Basant Kaiwartya Counsel appearing for the Respondent admits that he has received the entire maintenance amount payable to the Respondent till date and does not oppose the request of the Petitioner for remitting the matter for re-consideration on its merits before the Family Court.
5. In view of the aforesaid factual matrix of the case also taking note of the fact that the Petitioner has already honoured order of the Court below which shows the bonafide on his part on contesting the case on merit as he has cleared all the payment due till today which has also been admitted by the Counsel for the Respondent.
6. Accordingly, the present Petition is allowed and the matter is sent back to the First Additional Principle Judge, Family Court, Durg for considering the case of the Petitioner on merits. Let both the

parties accordingly appear before the Court below on 13th of the December, 2016 for further proceedings before the Court below.

7. In the light of the matter being remitted back it is further directed that the amount of maintenance which has been awarded by the court below shall be continuously be paid by the Applicant to the Respondent till the matter is finally adjudicated upon on merits.
8. With the aforesaid observation the Miscellaneous Criminal case No. 69/201515 is being ordered to be reconsidered by the Family Court, Durg after granting opportunity of hearing to the Applicant to put up his defence and the claimant a chance to rebutt.

Sd/-

(P. Sam Koshy)
Judge