

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 789 of 2016**

- Mohit Lal Sahu S/o Late Mohan Lal Sahu Aged About 42 Years R/o 31/b, Near D.A.V. School Sonari, P.S. Sonari, District West Singhbhum, Jamshedpur (Jharkhand)

---- Applicant**Versus**

- Smt. Renuka @ Rinku Sahu W/o Mohit Lal Sahu Aged About 34 Years R/o In Front Of Gurudwara, Panshil Nagar, Charoda, Bhilai, Tahsil & District Durg Chhattisgarh

---- Non-applicant

For Applicant
For Non-applicant

Mr. R. Sharma, Advocate
Mr. D. Kushwaha, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****13.12.2016**

1. The present Revision Petition has been preferred challenging the order dated 22.12.2015 passed by the First Additional Principal Judge, Family Court Durg (C.G.) in Misc. Case No. 571/2015.
2. The Applicant is primarily aggrieved with the ex-parte order passed by the Court below.
3. According to the Counsel for the Applicant the service of notice has not been properly effected upon the present Applicant and therefore the impugned order deserves to be set aside and the case may be remitted back to the Court below for reconsideration of the entire case.
4. The facts in brief for disposal of the present Revision Petition is that

in the instant case wife of the present Applicant had moved an application under Section 125 of the Cr.P.C. seeking maintenance against the present Applicant on 20.07.2015. According to the Non-applicant wife she had been forced to leave her matrimonial house on account of the cruelty which she was subjected to at the hands of the present Applicant. The Court after registration of the case had issued notice to the Respondent in the claim case i.e. husband, present applicant. It is said that the service of the said notice was served at the address where the applicant was residing but it was not served personally on the applicant and was served upon one Gyan Bai who is said to be the mother of the present applicant. Since there was no representation in spite of the service being made the Court below proceeded with the case ex-parte against the present Applicant and passed the order on 22.12.2015 allowing the application under Section 125 Cr.P.C. directing the present Applicant to pay an amount of Rs. 10,000./- per month to the Non-applicant wife as maintenance. Though, the impugned order has been passed on 22.12.2015 yet the Applicant has not taken any steps for either moving application for setting aside the impugned order before the Family Court nor he has preferred any revision petition before this Court. Subsequently, because there was non-compliance of the order, the execution proceedings were initiated and in due course of time and a warrant of levy and aailable warrants was issued by the Court below upon the present Applicant, it is then that he has moved the present Revision Petition.

5. Learned Counsel for the Applicant prays that he may be granted one more opportunity for contesting the case on merits so that he can

disapprove the claim of the present Non-applicant and further can adduce before the Court the proof of the source of his income, on the ground of which proper maintenance can be fixed if at all.

6. Learned Counsel for the Non-applicant wife opposing the Revision Petition submits that firstly the present Applicant should have preferred application under Sub-section 2 of Section 126 of the Cr.P.C. before the Family court seeking for setting aside ex-parte order and as such the present Revision Petition is not maintainable. Secondly, the Court below has taken note of the fact that the service of notice to the present Applicant was duly served upon his mother Gyan Bai who used to stay along with the present Applicant, therefore, it is being treated as valid service of notice. Hence there is no illegality or infirmity calling for interference with the impugned order and prays for rejection of the present Revision Petition.
7. Having considered the rival contentions put forth on either side and on perusal of the record this Court is of the opinion that taking into consideration the fact that the Supreme Court in the case of **Mohd. Naim Siddiqui v. Sultana Khatoon [1982 (3) SCC 369]** has entertained the appeal under Article 136 of the Constitution of India and had set aside the order passed by the Family Court and remitted it back to the Family Court for fresh adjudication, this Court is of the opinion so far as the first objection raised by the Counsel for the Applicant is made, this Court relying upon the decision of the Supreme Court in the aforesaid judgment so far as proper service is made or not is of the opinion that the present Petition is maintainable. Admittedly the present applicant has now received notice and wants to contest the case on merits. There is also an

order of maintenance passed almost 12 months ago and till date he has not paid any amount.

8. This Court therefore directs that subject to the Applicant deposits 50% of the amount as is due as on date before the Court below by the next date of hearing, the impugned order shall not be acted upon and accordingly shall stand quashed.
9. It is directed that the Applicant as well as the Non-applicant both shall appear before the Court below on 9th January, 2017. It is ordered that the Court below shall proceed further with the matter and shall decide the matter as expeditiously as possible preferably within a period of 3 months from 9th January, 2017.
10. On 9th January, 2017 the Applicant shall appear before the Court below and shall also file his reply/objection on the same date. No further time shall be granted. Thereafter, the matter shall be proceeded for evidence and for passing of the final order afresh.
11. With the aforesaid observation the present Revision Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE