

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 132 OF 2015

1. Bandu s/o Shankar Tiwade,
Age: 49 years, Occ: Agri.,
R/o. Khardi, Tq. Hadgaon,
Dist. Nanded.
2. Subhash s/o Shankar Tiwade,
Age: 44 years, Occ: Service,
R/o. Laxminarayan Nagar,
Taroda Bk., Nanded. ...Applicants

versus

Sundarabai Shankarrao Tiwade,
Age: 70 years, Occ: Nil,
R/o. C/o. Adv. Dattarao Shankarrao Tiwade,
Ganeshnagar, Nanded. ...Respondent

.....
Mr. A.M. Gaikwad, Advocate for applicants
Mr. G.P. Shinde, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :

Mr. Gaikwad, learned Counsel for the applicants, original respondent Nos. 1 and 2 submits that the order passed by the Family Court was *exparte* as against original respondent No. 1 Bandu, whereas without W.S. as against original respondent No. 2 Subhash before the Family Court. He submits that so as to show *bonafides*, the applicants have deposited amount of Rs.60,000/-, which is already withdrawn by the original respondents' mother Sunderabai.

2. In view of above, he submits that so as to give fair opportunity, the order proceeding *ex parte* against original respondent No. 1 Bandu and the order proceeding without W.S. against original respondent No. 2 Subhash before Family Court, Nanded, be set aside.

3. The above referred position is not disputed by learned Counsel for the respondent.

4. In the interest of justice and having regard to the fact that the applicants have shown their *bonafides* by depositing the amount of Rs.60,000/-, which is already withdrawn by their mother Sunderabai, it will be appropriate, in my opinion, to remand the matter back to the Family Court, Nanded, with observations that original respondent Nos. 1 and 2 are permitted to place on record their W.S. and order proceeding against them *ex parte*/without W.S. is set aside, subject to payment of costs Rs.3500/- (Rs. Three thousand five hundred only) each, to be deposited before the Family Court, to which their mother Sunderabai will be entitled for withdrawal of the same.

5. The Principal Judge, Family Court, Nanded to decide the

application preferred under Section 125 of the Code of Criminal Procedure afresh, as the order impugned in the background of above observations is quashed and set aside. It will be appropriate to observe that till decision of application under Section 125 of the Code of Criminal Procedure, the applicants herein shall continue to pay the maintenance as was ordered by the order impugned dated 23/06/2015.

6. The parties agree that they shall appear before learned Principal Judge, Family Court, Nanded on 13/04/2016, who shall decide the application (Petition No. E-309/2014) preferred under Section 125 of the Code of Criminal Procedure within a period of four weeks thereafter.

7. The revision application stands allowed and disposed of in above terms.

[N.W. SAMBRE, J.]