

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No. 53 OF 2017**

Sanjay Sonwani S/o Jagdish Prasad, Aged About 28 Years, R/o Katora, P.S.
And Post Patna, District Korea, Chhattisgarh(Non-Applicant)

---- Appellant

Versus

Uma Sonwani W/o Sanjay Sonwani, Aged About 24 Years, by Caste Harijan, R/o
Village Kotkatal, P.S. Patna, Post Mahura, Tahsil Baikunthpur, District Korea,
Chhattisgarh(Applicant)

---- Respondent

For Appellant	:	Mr. Sunil Tripathi, Advocate
For Respondent	:	Mr. Pragalbha Sharma, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****26/10/2017**

1. This is a miscellaneous appeal preferred by the appellant Sanjay Sonwani against the order dated 27/03/2017 passed by the Family Court Baikunthpur, District Korea (CG) in Miscellaneous Civil Suit No. 14 of 2016, by which, the Court below while exercising the power enumerated under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has set aside the *ex parte* order dated 18/05/2016 passed in Miscellaneous Criminal Case No. 135 of 2015.

2. The undisputed facts of the case, are that, the respondent Uma Sonwani initiated a proceeding before the Family Court, Baikunthpur as per the provision prescribed under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') claiming amount of maintenance against her

husband, the appellant herein. In the said proceeding, the appellant was proceeded *ex parte* as he did not appear despite summons of notice of the said proceeding.

3. The trial Court after considering the matter has allowed the said application for maintenance filed by the respondent/wife under Section 125 of the CrPC on 18/05/2016 by awarding an amount of maintenance to the tune of Rs.1500/- per month from the date of order, i.e. 18/05/2016.

4. Being aggrieved with the aforesaid *ex parte* order, an application was made by the appellant/husband under Order 9 Rule 13 of the CPC. The said proceeding was registered as Miscellaneous Civil Suit No. 14 of 2016. While considering the said application, it was observed by the trial Court that sufficient reasons are required to be shown for setting aside its earlier order as per the provisions prescribed under sub-Section (3) of Section 126 of the CrPC. While observing as such, it was observed further that since a matter was quasi judicial in nature, therefore, while entertaining the application filed under Order 9 Rule 13 of the CPC, the order impugned dated 27/03/2017 has been passed by allowing the said application.

5. Mr. Sunil Tripathi, learned counsel for the appellant submits that while allowing the application, the further observation as made by the trial Court at sub-para (01) of para 15 therein was wholly unwanted and unknown to the law as after allowing the application for setting aside the said *ex parte* order, no direction as such ought to have been made. He therefore submits that the order impugned as passed by the trial Court in this regard deserves to be modified.

6. On the other hand, Mr. Pragalbha Sharma, learned counsel for the respondent submits that the proper remedy which was available to the appellant was to file the revision as the original proceeding initiated by the respondent/wife was under the CrPC. He therefore submits that the instant miscellaneous appeal

is not maintainable and the observations as made by the Court below deserves to be upheld.

7. I have heard learned counsel appearing for the parties and perused the entire record annexed with this appeal carefully.

8. At the outset, the order impugned would show that the trial Court has exercised its power under Order 9 Rule 13 of the CPC while setting aside the said *ex parte* order dated 18/05/2016. In view of the said fact, the instant appeal is held to be maintainable. The order impugned, would however show that while allowing the said application for setting aside the said *ex parte* order dated 18/05/2016, certain observations have been made at sub-para (01) of para 15, which deserves to be modified. Once the application for setting aside the said *ex parte* order is allowed, then no direction as such was required to be made except to permit the appellant/husband to contest the said proceedings initiated under Section 125 of the CrPC. Consequently, the observations as made in the said paragraph is hereby set aside. It is however made it clear that the amount which has already been deposited by the husband/appellant to his wife/respondent shall not be recovered by him.

9. The appeal is disposed of with the aforesaid observations and the trial Court is directed to proceed further to decide the application filed under Section 125 of the CrPC in accordance with law. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge