

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 50 of 2017

Kush Kumar S/o Ramgulam Netam, Aged About 30 Years By Caste Gond, R/o Village Bangalipara, New Sarkanda, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

Smt. Rajkumari W/o Shri Kush Kumar, Aged About 25 Years D/o Mahettar Ram, By Caste Gond, R/o Village Lahrapara, Tahsil Pali, District Korba, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Amit Kumar Chaki, Advocate
For Respondent	:	Shri P.K. Patel, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

01/03/2017

1. This petition is directed against the order dated 8.9.2016 passed by the Family Court, Katghora by which petitioner's application for setting aside ex-parte order has been rejected for want of prosecution.
2. Learned counsel for the petitioner submits that the petitioner had moved an application for setting aside ex-parte order of maintenance in which proceedings, the petitioner was continuously appearing and it is not a case that he was avoiding to appear. He submits that from January, 2016 till August, 2016, except one date, on all other dates, the petitioner was appearing before the Court below and only on oral statement made by the respondent, the petitioner's case has been dismissed for want of prosecution. Therefore, looking to the circumstances and in the interest of justice, the petitioner may be allowed to contest the matter on merits because he has already suffered an ex-parte order of grant of maintenance which is operating against him.
3. On the other hand, learned counsel for the respondent opposes the prayer and submits that the Court below was justified in passing the order because on 12.8.2016 also, the petitioner did not appear and on 8.9.2016, he again failed to

appear.

4. Taking into consideration the submissions made by learned counsel for the parties, taking into consideration that the petitioner had already moved an application for setting aside an ex-parte order of maintenance awarded against him and that between the period from January, 2016 to August, 2016 till the date the order was passed by the learned family Court, the petitioner had appeared on most of the dates, in the interest of justice, impugned order dated 8.9.2016 passed by learned Family Court, Katghora, is set aside and with a view to afford the petitioner, an opportunity to contest the matter on merits.
5. The petition is accordingly allowed to the extent and in the manner indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen