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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1130 of 2017

1. Smt. Mithelesh Mishra, W/o Shyamadhar Mishra, aged 40 years, R/o Satnami Para Sanjay Nagar Raipur Chhattisgarh, P.S. and Tahsil Raipur, District Raipur, Chhattisgarh
2. Ku. Seeta Mishra, D/o Shyamadhar Mishra, age 14 years, R/o Satnami Para Sanjay Nagar, Raipur, Chhattisgarh through Natural Guardian Petitioner No.1 Smt. Mithelesh Mishra (mother)

---- Applicants

versus

Shyamadhar Mishra, S/o Shri Ramfal Mishra, aged about 50 years,
R/o Satnami Para Sanjay Nagar, Raipur, Chhattisgarh

--- Respondent

For Applicants	:	Ms. Priya Mishra, Advocate
For Respondent	:	Shri Sanjay Agrawal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

21.3.2018

1. The revision is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The Applicants have preferred this revision being aggrieved by the order dated 12.10.2017 passed by the Principal Judge, Family Court, Raipur in Case No.650 of 2016 rejecting the application for grant of maintenance preferred by the Applicants on the basis of preliminary objection raised by the Respondent/husband of Applicant No.1.
3. As per the pleadings of the Applicants, marriage between Applicant No.1 and the Respondent was solemnised in the year 1989 and out of their wedlock, birth of Applicant No.2 took place. It is alleged that thereafter the Respondent started ill-treating the Applicants. A report thereof was lodged by Applicant No.1 on 19.1.2012.

Thereafter, the Respondent persuaded the Applicants and took them back to his house. But, the Respondent did not stop and continued to commit cruelty with the Applicants. The Applicants filed an application under Section 125 of the Code of Criminal Procedure against the Respondent for grant of maintenance. The said application was registered as Criminal Case No.608 of 2013 in which interim maintenance of Rs.4,500/- was ordered in favour of the Applicants, but, later on, the said application was dismissed on the ground of out of Court settlement. Thereafter, the Respondent filed an application under Section 13(1) of the Hindu Marriage Act. During pendency of this divorce petition, the Respondent fraudulently obtained signatures of Applicant No.1/wife on an application for divorce on 16.11.2015. Thereafter, the Respondent stopped appearing in the Court. The divorce petition pending in the Court was dismissed. Thereafter, the Applicants filed the petition for grant of maintenance before the Family Court. During pendency of the said petition, the Respondent filed a preliminary objection on the ground that Applicant No.1/wife has voluntarily obtained divorce from the Respondent and she has been re-married with one Santosh Mishra. The preliminary objection was duly replied by the Applicant No.1 denying the averment of the Respondent regarding obtaining of voluntary divorce and re-marriage. The Family Court allowed the preliminary objection of the Respondent/husband and dismissed the application submitted by the Applicants under Section 125 of the Code of Criminal Procedure. Hence, this revision.

4. Learned Counsel appearing for the Applicants submits that the Family Court has dismissed the application under Section 125 of

the Code of Criminal Procedure moved by the Applicants only on the basis of the preliminary objection raised by the Respondent. The Applicants have not been afforded any opportunity to lead evidence. Dismissing the application under Section 125 of the Code of Criminal Procedure only on the ground of preliminary objection is illegal.

5. Learned Counsel appearing for the Respondent supported the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. As per the preliminary objection of the Respondent, the marriage between him and Applicant No.1 has been dissolved by execution of a deed of divorce by the parties before the Sub-Registrar, Raipur. But, such dissolution of marriage is not permissible in the eyes of law. With regard to re-marriage of Applicant No.1, some photographs and photo copy of one certificate issued by some *Pandit* (worshipper) have been submitted by the Respondent and the Family Court has believed the same and allowed the preliminary objection of the Respondent without taking any evidence on record. In reply to the preliminary objection, Applicant No.1/wife has denied all the averments made in the said objection. In these circumstances, it was essential for the Family Court to direct both the parties to lead evidence in support of their averments/contentions and thereafter the matter was to be decided on merits. Therefore, the impugned order dated 12.10.2017 passed by the Family Court is illegal.
8. In the premises of aforesaid, the revision is allowed. The

impugned order dated 12.10.2017 passed by the Family Court is set aside. The matter is remanded to the Family Court. The Family Court shall direct the Respondent/husband to file his written statement at an early date and thereafter shall afford opportunity to both the parties to lead their evidence. Thereafter, the Family Court shall hear and decide the matter afresh on its own merits in accordance with law as early as possible preferably within a period of six months from the date of filing of the written statement by the Respondent. It is made clear that if any observation is made hereinabove on merits of the case, the same shall not be binding upon the Family Court while hearing and deciding the matter afresh. The parties are directed to appear before the Family Court on 30th April, 2018.

Sd/-
(Arvind Singh Chandel)
Judge