

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.283 of 2018

Chhamarsai @ Chamarsai Bhagat, aged about 50 years, S/o Butiyaram, Caste Uraon, R/o Dumarbahar, Present Address Village Gerwani, P.S. and Tahsil Faujipatra, District Raigarh, Chhattisgarh

---- Applicant

versus

Jamnibai, aged about 47 years, W/o Chamaarsai @ Chamarsai, Caste Uraon, R/o Dumarbahar, Present Address Kudri (Ghutiya), P.S. Janjgir, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Applicant	:	Shri Anand Shukla, Advocate
For Respondent	:	Ms. Usha Chandrakar, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

29.6.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The revision has been preferred against the order dated 22.12.2017 passed by the Family Court, Janjgir-Champa in M.J.C. No.79 of 2017, whereby the Family Court has rejected the application under Section 126(2) of the Code of Criminal Procedure moved by the Applicant/husband for setting aside the *ex parte* order dated 30.7.2016, whereby the Family Court has partly allowed the application of the Respondent/wife and awarded her maintenance of Rs.5,000/- per month.
3. Facts of the case, in brief, are that an application under Section

125 of the Code of Criminal Procedure was preferred by the Respondent/wife against the Applicant/husband for grant of maintenance. Vide order dated 30.7.2016, maintenance of Rs.5,000/- per month was granted in her favour. Thereafter, an application under Section 125(3) of the Code of Criminal Procedure for execution of the said order was filed by the Respondent/wife. The Applicant/husband also preferred an application under Section 126(2) of the Code of Criminal Procedure on 15.5.2017 for setting aside the *ex parte* order dated 30.7.2016 which was rejected by the Family Court on the ground that since 20.7.2016 he was aware of filing of the application under Section 125 of the Code of Criminal Procedure, but he deliberately did not appear before the Court.

4. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
5. From perusal of the impugned order itself, it is clear that in the proceeding under Section 125 of the Code of Criminal Procedure, notice had been served to the Applicant/husband on 20.7.2016, but he did not appear before the Trial Court. When the *ex parte* order dated 30.7.2016 was passed and execution proceeding was filed and recovery warrant was issued, thereafter the application under Section 126(2) of the Code of Criminal Procedure was filed by the Applicant/husband on 15.5.2017. Since on 20.7.2016, notice was served upon the Applicant/husband and he deliberately did not appear before the Trial Court and 10 months thereafter he filed the application for setting aside the *ex parte* order, delay in filing the application has not been properly explained, he himself

deliberately avoided the order, the Family Court has rightly rejected the application of the Applicant/husband.

6. Consequently, I find no merit in the revision. It is, therefore, dismissed.

Sd/-
(Arvind Singh Chandel)
Judge