

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 23.9.2019****Order delivered on 19.12.2019****CRR No. 838 of 2015**

- Vishnu Prasad Mishra S/o Late Manharan Aged About 52 Years R/o Ganjpara Ward No. 10, Mahasamund, Distt. Mahasamund Chhattisgarh.

---- Applicant**Versus**

- Smt. Santoshi Mishra W/o Shri Vishnu Mishra Aged About 40 Years R/o Village Mandabharra, Tahsil And Police Station Narharpur, District North Bastar Kanker Chhattisgarh.

----Respondent

For Applicant	: Shri Sudeep Johri, Advocate
For Respondent	: Shri Parag Kotecha, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. Heard.
2. This revision is directed against the order dated 7.5.2015, passed by the Judge, Family Court, Kanker, North Bastar Kanker(CG) in Misc. Criminal Case No.58/2014, whereby the Judge Family Court has awarded maintenance of Rs.5,000/- per month to the respondent/wife on her application filed under Section 125 Cr.P.C.
3. Brief facts of the case are that before the Family Court the respondent/wife filed an application under Section 125 Cr.P.C. for grant of maintenance on the ground that her marriage with the respondent was solemnized on 17.12.2010. Both, the applicant and the respondent were previously married and with their mutual

consent and with the permission of first wife of the applicant/husband the applicant had performed marriage with the respondent herein. After some time of the marriage, applicant's first wife started beating the respondent and forced her to leave her matrimonial house. Thereafter, the applicant kept the respondent in a rented house and started giving Rs.6,000/- as household expenses, but after some time, he stopped to go to the respondent and also stopped giving the household expenditure, due to which, the respondent came to her parental house. She pleaded that she is dependent on her parents and she has no source of income and unable to maintain herself. She pleaded that the applicant is in government service and getting salary of Rs.30,000/- per month, therefore, she claimed maintenance of Rs.10,000/- per month from the respondent/husband.

4. In reply, the applicant denied all the allegations levelled against him and pleaded that he never tortured the respondent and she had taken away with her ornaments and some articles amounting to Rs.1,00,000/- and she herself has broken her promise given by her at the time of marriage, therefore, she is not entitled for any maintenance. He also pleaded that though his first wife has given her consent to contract a second marriage with the respondent, but the respondent after coming to his house, started to quarrel him to divorce his first wife.
5. Before the Family Court, the applicant did not appear on 22.4.2015 and other dates also, therefore, ex-parte order was

passed by the Family Court after appreciating the evidence and hearing the respondent/wife for grant of maintenance of Rs.5,000/- per month on 7.5.2015. Hence, this revision has been filed by the applicant for setting aside the order.

6. Learned counsel for the applicant submitted that the order passed by the Family Court is arbitrary, illegal and contrary to law. The Family Court should have granted to more opportunities to the applicant to present his case and it has failed to see that the respondent without taking permission from the applicant herself had gone to her parental house and she is second wife of the applicant, therefore, she is not entitled for any maintenance and the impugned order is liable to be set aside. He further submitted that as his counsel has not given any information that the case is fixed for hearing on that date, he could not appear and the Family Court has passed the ex-parte order granting maintenance of Rs.5,000/- per month in favour of the respondent, which is improper and bad in law. He placed reliance on various judgments of the Hon'ble Apex Court passed in the matters of **D. Velusamy Vs. D. Patchaiammal, Criminal Appeal Nos. 2028-2029 of 2010, judgment dated 21.10.2010; (1981) AIR (SC)1711, Hasmat Rai and Another Vs. Raghunath Prasad; (2001) AIR (SCW) 598, Gaya Prasad Vs. Sh. Pradeep Srivastava; and (1981) AIR (SC) 1113, M.M. Quasim Vs. Manohar Lal Sharma and Others.**

7. On the other hand, learned counsel for the respondent/wife supported the impugned order passed by the Family Court. He placed reliance on the judgments of the Hon'ble Apex Court passed in the matters of **Badshah Vs. Sou. Urmila Badshah Godse and Another, (2014) AIR (SCW) 256; AIR (1988)SC 644, Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another; (2010) AIR(SCW)6497, Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Another** and judgments of this Court passed in **Shikha Majumdar and others Vs. Anutosh Majumdar (2015) 2 CGLJ 190 and AIR 2019 Chhattisgarh 154, Abhilash Kumar Gupta Vs. Smt. Shweta Baldev Gupta**. He submitted that as the applicant has not appeared on many dates, the Family Court has passed this order ex-parte and there is no irregularity or infirmity in the order passed by the Family Court.
8. I have heard learned counsel for the parties and perused the record.
9. It is clear from the order sheets of the court below that on 13.4.2015 and 20.4.2015, the applicant/husband was present before the court below and he filed his reply and the reply to the interim application on 20.4.2015 and the court after hearing arguments on interim application fixed the case for orders on 22.4.2015. On 22.4.2015, neither the applicant/husband nor his counsel appeared before the Family Court and the Family Court passed orders on the interim application on 22.4.2015. Thereafter,

the matter was fixed for evidence on 24.4.2015, where the wife was present and produced her number of witnesses, but the husband did not appear. Thereafter, again the matter was fixed for further evidence on 30.4.2015, but the husband did not appear and the Family Court proceeded ex-parte against the husband and recorded wife's evidence. The case was again fixed for wife's evidence on 2.5.2015, where the husband was already ex-parte and matter was fixed for final arguments on 4.5.2015 and after hearing final arguments of the applicant/wife on 4.5.2015, the matter was closed for orders and finally, the matter was fixed for orders on 7.5.2015 and the Family Court has passed the impugned order dated 7.5.2015 granting maintenance of Rs.5,000/- in favour of the wife/respondent, herein.

10. It is clear from the order sheets of the Family Court that the applicant was present before the Family Court 20.4.2015 and he has also filed his reply and reply to the application for interim maintenance and he was well conversant with the fact that the matter is fixed for orders on the next date i.e. on 22.4.2015, but he knowingly did not appear till the case was finally decided. The Family Court after appreciating the evidence of the wife found that the evidence of wife on record remained uncontroverted and she has duly proved her case and passed the order of maintenance in favour of the wife.
11. In **Chanmuniya, (2010) AIR (SCW) 6497** (supra) the Hon'ble Apex Court has held in para 26 as under :

“26. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.”

12. The applicant has admitted in his reply that he kept the respondent /wife in a rented house and was giving expenses for living and as the wife is not following conditions of agreement, therefore, she is not entitled for any maintenance. But before the court below at the evidence stage he remained ex-parte and did not prove its case or breach of any agreement by the respondent/wife and the Family Court was obliged under the law to hold in favour of the respondent/wife that the applicant neglected towards her though he kept her in a rented house and was giving living expenses. He was well known that if he stops giving living expenses to the respondent/wife, she will be starved and would be compelled to go to her parental house, but despite this fact, he had neglected his duty towards the respondent and did not bother it, therefore, on the uncontroverted evidence the Family Court has passed the order of grant of maintenance of Rs.5,000/- per month in favour the respondent/wife. It also appears that the applicant has not challenged the ex-parte order, therefore, it attains finality.

- 13.** Considering the facts and circumstances of the case and the evidence and also in light of the judgment of Hon'ble Apex Court in the matter of Chanmuniya (supra), I am of the opinion that a broad and expansive interpretation should be given to the term wife to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125 Cr.P.C. The applicant is a government servant and is getting salary of Rs.30,000/- per month, thus, he can pay the maintenance amount properly and the order of maintenance of Rs.5,000/- per month is just and proper in the present scenario. Therefore, the order passed by the Family Court does not suffer from any illegality or infirmity and the revision being devoid of merits is liable to be and is hereby dismissed.

Sd/

(Rajani Dubey)
JUDGE