

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 522 of 2019

1. Smt. Kavita wife of Jeetlal, daughter of late Budhram, aged about 27 years, Caste- Pando, resident of Village- Bundiya Bahra, Police Station & Tahsil- Baikunthpur, District-Koriya (C.G.)
2. Ku. Reena daughter of Jetlal, aged about 10 years, minor, represented through mother and legal guardian Smt. Kavita, resident of Village- Bundiya Bahra, Police Station & Tahsil- Baikunthpur, District- Koriya (C.G.)

---- Applicants

Versus

- Jeetlal son of Shri Beer Singh Pando, aged about 30 years, Caste- Pando, resident of Village- Gadbadi, Police Station & Tahsil- Baikunthpur, District- Koriya (C.G.)

---- Respondent

For Applicants : Mr. S. K. Kushwaha Adv.

Hon'ble Smt. Justice Rajani Dubey

Order on Board

23.07.2019

1. This revision has been filed by the applicant against the order dated 25.03.2019 passed by learned Family Court, Baikunthpur, District Koriya (C.G.) in Miscellaneous Criminal Case No. 66/2018 whereby the learned Family Court has allowed the application under Section 126(2) of Cr.P.C. filed by respondent/husband and set-aside the ex-parte order dated 23.06.2018.

2. Before the Family Court, the applicants had filed an application under Section 125 of Cr.P.C for maintenance from the respondent. The said case was registered as Misc. Cr. Case No. 97/2017. During the pendency of the aforesaid case, the learned trial Court had issued notice to the respondent. The notice was accordingly delivered upon the respondent. The registered dak was received by the Family court bearing delivery report of notice. But, despite receiving notice, the non-

applicant did not appear before the learned Family Court, therefore, the learned Family Court proceeded ex-parte against the non-applicant and after recording evidence, vide order dated 23.06.2018, passed an order in favour of applicants and directed non-applicant to pay Rs. 4500/- per month to the applicants towards their maintenance.

3. The respondent filed an application under Section 126(2) of Cr. P.C. before the Family Court for setting aside the ex-parte order dated 23.06.2018. Learned Family Court has recorded the statements of non-applicant and his witnesses and vide order dated 25.03.2018, the learned Family Court has set-aside the order dated 23.06.2018 and started rehearing of the case bearing M. Cr. C. No. 97/2017. Hence, this revision petition.

3. learned counsel for the applicants submits that order dated 25.03.2019 is bad in law, perverse an erroneous, hence it is liable to be quashed. He further submits that it is evident that in spite of several adjournments & serving notice of case, the respondent did not file show cause before the trial Court and remained absent in the Court, for which the learned Family court had no alternative but to proceed with ex-parte hearing. The stand of non-applicant was that he was not aware of the proceeding of the Family Court. As the notice issued to the non-applicant was duly served upon him and it is not the case where the address of non-applicant was incorrectly mentioned in the cause title and on account of this, no notice was served upon him. Counsel for the applicant further submits that the learned Family court has failed to appreciate that the applicant No. 2 is school going minor child and applicant has no source of income, facing great financial crisis to run their livelihood, therefore, rehearing of the case amount to put extra burden upon the applicants, which is not sustainable in law.

5. No representation, however, is made on behalf of the respondents to put up his stand points.

6. Heard learned counsel for the applicant and perused the material on record including the impugned order.

7. Learned Trial Court in, para 13 and 14, finds that respondent

filed an application within one month on the ground that he got no chance to put his favour before the Court. Therefore, learned Court below allowed the application of the respondent. The order passed by the Family Court is just and proper and requires no interference by this Court in revision. However, the applicants are at liberty to file an application for interim maintenance before the learned trial Court.

8. Accordingly, this revision has no substance and it is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE