

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 800 of 2019**

1. Anjani Diwakar W/o Rajkumar Diwakar Aged About 41 Years R/o C/o Ms. Saroj Parkar Gitanjali Enclave, Ring Road No. 02, Mig-08, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh.
2. Gourav Diwakar S/o Rajkumar Diwakar Aged About 9 Years Thorough Mother-Anjani Diwakar, R/o C/o Ms. Saroj Parkar Gitanjali Enclave, Ring Road No. 02, Mig- 08, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh.

---- Applicants

Versus

- Rajkumar Diwakar S/o Shri Malik Ram Diwakar Aged About 40 Years R/o Village Godkhani, Infront Of High School, Police Station- Lormi, Tahsil Lormi, District- Bilaspur, Chhattisgarh.

---- Respondent

For Applicants	:	Ms. Upasana Mehta, Adv.
For Respondent	:	None, though notice has been served.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****04.09.2019**

1. This revision has been filed by applicants against the order dated 03.05.2019 passed by learned Additional Principal Judge Family Court, Bilaspur (C.G.) in MJC No. 265/2018 whereby the learned Family Court has allowed the application filed by the respondent under Section 126 (2) of Cr.P.C. and set-aside the ex-parte order dated 15.01.2018.

2. Learned counsel for the applicant submits that order dated 03.05.2019 is bad, illegal and contrary to law and deserves to be set-aside. Applicant had produced all the registered posts that were issued by the learned Family Court for his appearance but

the respondent, just to take the procedural benefit and to harass the present applicants had never appeared during the pendency of the application of Section 125 Cr.P.C., filed by the present applicants, and thereafter, when an application under Section 125(3) was filed by the present applicants and sending repeatedly notices to the respondent in both the addresses but he never appeared before the learned family Court. Thereafter, the respondent filed application under Section 126(2) of Cr.P.C. and has stated therein that he is living at village- Goadkhamhi. He further submits that the learned Family Court should also have considered that the present applicant No. 1 is a housewife and is not an earning member and applicant No. 2 is son of applicant No.1 and respondent it is the bounden duty of the respondent to take the liability of the applicants. He next submits that the impugned order passed by the learned trial Court suffers with material irregularity and contrary to the facts available on record and the same is liable to be set-aside.

3. None appears on behalf of the respondent though notice has been served.

4. Heard counsel for the applicants and peruse the material available on record.

5. Section 126 of Cr.P.C. provides thus:-

126. Procedure. (1) *Proceedings under Section 125 may be taken against any person in any district.-*

(a) *Where he is, or*

(b) *Where he or his wife resides, or*

(c) *Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.*

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex-parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just.

6. The learned trial Court, considering the whole case, allowed the application of the respondent on the ground that it will be justifiable if the respondent is granted the opportunity to remain present before the Court, and set-aside the ex-parte order. The proceeding under Section 125 Cr.P.C. is civil in nature and learned trial Court found it justifiable. The respondent must be given opportunity to represent before the Court because present is a case related to family matter and in the family matter, submission of both the parties is necessary.

7. Considering the material available on record and evidence of the parties, this Court is of the opinion that the order dated 03.05.2019, passed by the Court below being fully justified, do not call for any interference by this Court in revision.

8. Accordingly, this revision has no substance and it is liable to be and is hereby dismissed with direction to the trial Court to dispose of this matter with the co-operation of the parties, as early as possible preferably within a period of four months from the date of receipt of copy of this order. It is also directed that the applicants may file application for interim maintenance before the learned trial Court and the trial Court shall dispose of the matter after hearing both the parties with the above direction.

Sd/-
(Rajani Dubey)
JUDGE