

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1047 of 2019

- Parmanand Mahanand S/o Murli Mahannad, Aged About 35 Years, R/o House No G/02, Strit No. 81, Bambe Aawas Urla Durg, Police Station Urla, Tahsil and District Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

1. Banita Mahanand W/o Parmanand Mahanand, Aged About 28 Years, R/o near/ back side of the Shiv Mandir, Ward No. 47, Raipur Naka Durg, Tahsil and District Durg, Chhattisgarh., District : Durg, Chhattisgarh
2. Ku. Pragati Mahanand D/o Parmanand Mahanand, Aged About 09 Years, through the Wali Mother applicant No. 01 Banita Mahanand, R/o near/back side of the Shiv Mandir, Ward No.47, Raipur Naka Durg, Tahsil and District Durg, Chhattisgarh., District : Durg, Chhattisgarh
3. Uday Mahanand S/o Parmanand Mahanand, Aged About 07 Years, through The Wali Mother applicant No. 01 Banita Mahanand, R/o near/ back side of the Shiv Mandir, Ward No. 47, Raipur Naka Durg, Tahsil and District Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Applicant– ShriVijay K. Deshmukh and Shri Curtis Collins, Advocates.
For Respondent No.1 – Shri Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-03-2020

Heard.

1. This revision petition has been brought challenging the order dated 06-06-2019 which was passed ex-parte against the applicant granting maintenance of Rs.4000/- to the respondents, which is to be paid by the applicant.
2. It is submitted that the applicant had not been able to present his case before learned Family Court. The applicant had contended in his reply that respondent No.1 has earning of Rs.20,000/- per month and that there is no certainty of any earning of the applicant that has not been considered in the impugned order. Therefore, it is prayed that the applicant be given an opportunity to present his case before the Court below and for that purpose the

case be remanded back.

3. Learned counsel for the respondent No.1 opposes the submission and submits that the applicant had willfully not participated in the proceeding before the Family Court, therefore the ex-parte order has been passed and the applicant has liberty to challenge the ex-parte order passed against him under Section 126(2) of the Cr.P.C. Hence, it is prayed that this petition be dismissed.

4. Heard learned counsel for the parties and perused the record.

5. The only issue raised in this petition is this, that the applicant do not have the opportunity to present his case before the Court below. On perusal of the order sheets of the record of the Family Court, it is found that after filing of the application under Section 125 of the Cr.P.C., the applicant gave appearance before the Court and he was also represented by his counsel. On the date fixed for recording of the evidence of the respondent side, the applicant was not present before the Court and also he was not represented. On the subsequent date the applicant moved an application for setting aside the ex-parte proceeding against him, his application was allowed on that date, i.e., 05-04-2019 and the case was again fixed for cross-examination of the respondent witnesses on 23-05-2019. On the given date the applicant again remained absent and then the proceeding was taken ex-parte and the impugned order was passed.

It is found that the applicant had been given all the opportunities to present his case and it is not a case of denial of opportunities to him. On the contrary, it is a case where the applicant needs to explain a good cause for his non-appearance and non-representation on the date of hearing and this opportunity is available to him under Section 126(2) of the Cr.P.C. and in case the applicant wants to establish his incapability for paying the maintenance he has also an option of filing application under Section 127 of the Cr.P.C. before the same Court. Therefore, I do not find any reason for interference in the

impugned order. Therefore, this revision petition is disposed off and dismissed at motion stage. The applicant is given liberty to file application under Section 126(2) of the Cr.P.C. or under Section 127 of the Cr.P.C. if he is so advised by his counsel.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil