

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No.22 of 2020

- Khomesh Sahu, S/o Anant Sahu, Aged About 30 Years, R/o Bhatapara, Naya Ganjwar, Near Balaji Loha Dukan, Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh

---- Petitioner

Versus

- Lalita Sahu @ Santoshi Sahu, W/o Khomesh Sahu, Aged About 26 Years, R/o Krishna Vihar, Chantidih, P. S. Sarkanda, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Respondent

Application for review of the order dated 06.12.2018 passed in FAM

No.216 of 2018

By circulation in Chamber

D.B.: Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Smt. Vimla Singh Kapoor

07.02.2020

IA No.01

1. This is an application for condonation of delay in filing the review petition.
2. For the reasons mentioned in the application (IA No.01), the same is allowed and the delay of 342 days in filing the review petition is condoned.
3. The applicant has filed the instant application for review of the order dated 06.12.2018 passed in FAM No.216/2018.
4. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.

5. The review petitioner (respondent in FAM No.216/2018) seeks review of the order dated 06.12.2018 passed by this Court in FAM No.216/2018 on the ground that he is living under below poverty line and earning Rs.5,000/- per month towards his salary while working as seasonal worker in Mandi at Bhatapara. According to the review petitioner, the non applicant (appellant in first appeal) is running the beauty parlour and earning Rs.15,000/- per month.

6. At the time of hearing of FAM No.216/2018, this Court passed the following order on 06.12.2018:-

“1. Trial Court has passed the decree for divorce by mutual consent on the basis of application filed by the parties on 2-1-2018 (Annexure – A/2).

2. In this appeal, the appellant would pray that the decree has not been passed in terms of settlement particularly mentioned in paras 4 and 7 (b) of the application, therefore, the decree needs to be modified.

3. In course of hearing also both the parties would agree that the condition was agreed and incorporated in the application that the respondent husband shall maintain his son who shall reside with the mother (appellant herein), however, while preparing the decree this term of settlement has been left out.

4. Considering the statement of the parties in para 4 and the prayer for passing a decree in terms of clause 7 of the application, the instant first appeal is disposed of by modifying the impugned decree to the extent that the respondent shall pay an amount of Rs.4,000/- per month to the appellant for maintenance of their son. The modification is only an addition to the original decree.

5. A modified decree be drawn accordingly.”

7. A bare perusal of our order would manifest that firstly the Trial Court has passed the decree of divorce by mutual consent on

the basis of application filed by the parties, wherein it was agreed that the applicant herein (husband) shall maintain his son by giving monthly maintenance and the son shall reside with his mother.

8. In course of hearing of first appeal (M), the decree passed by the Trial Court was modified only to the extent that the husband shall pay an amount of Rs.4,000/- per month to the wife for maintenance of their son. It was so directed because despite there being a clause in the application for passing a decree in terms of mutual consent, this particular aspect of the matter was not included in the decree. We have passed the order in open Court after hearing both the parties. There is no error apparent on the face of the record.
9. On consideration of the above-stated grounds, which are in the nature of taking liberty to re-argue the appeal, it appears, the same are not sustainable in the eyes of law.
10. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the Constitution, the petitioner has not produced any ground for review.

11. It appears that the petitioner by presentation of this review petition seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition, which is not permissible and tenable in law.
12. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: **Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455, Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothermicsm & Hydropower Ltd. and others, (2005) 6 SCC 651).**
13. As a sequel, the review petition, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge