

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Proceedings through Video Conferencing

CR.R. No. 287 of 2021

1. Asha W/o Chote Lal Aged About 30 Years R/o Narayanpur, P. S. and Tehsil Ramanujnagar, District Surajpur CG
2. Divyanshu D/o Shri Chote Lal aged about 8 Years

Revisioner No. 02 is a minor and is represented by natural guardian mother Smt. Aasha W/o Shri Chote Lal, aged about 30 Years, R/o Narayanpur, P. S. and Tehsil Ramanujnagar, District Surajpur CG

Applicants

Versus

Chotelal S/o Shri Rajaram Yadav aged about 35 Years R/o Village Kanp, Nawapara, Post Madai, District Korba CG

Non-applicant

 For applicants : Shri Surfaraj Khan, Adv.
 For non-applicant : Shri Devesh G. Kela, Adv.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

12-8-2021

1. Challenge in this revision petition is to the order dated 1-2-2021 passed by Family Court, Surajpur, Distt. Surajpur (CG) in MJC (Cr.) No. 189/2019.

2. Brief facts pertaining to this revision are that the applicants filed an application for recovery of maintenance amount granted to them under Section 125 of the Criminal Procedure Code, 1973 (in brevity 'Cr.P.C.'), against the non-applicant, which was registered as MJC(Cr.) No. 49/2012. Said MJC(Cr) No. 49/2012 was dismissed on 24-9-2018 for non-appearance of the applicants. The applicants filed an application for restoration of said MJC(Cr.) No. 49/2012 which was dismissed by the trial Court by the impugned order mentioning that certified copy was received by her on 5-11-2018, thereafter on 14-1-2019 she has filed the application for restoration, but she has not stated sufficient reasons as to why she has not filed restoration application as soon as she received the certified copy, further she has not filed condonation application under Section 5 of the Limitation Act. Hence, this revision.

3. Learned counsel for the applicants submits that on 24-9-2018, the applicant No. 1 was present in the Court with her 8 years old daughter, she had taken her daughter to have breakfast because she was hungry. When she came back, she came to know that her name was called on, but she does not know as to what proceeding was done. On 26-9-2018, the applicant No. 1 filed application for certified copy, which was supplied to her on 5-11-2018. The applicant is a resident of remote village, due to which, she could not contact her counsel. Therefore, some delay occurred in preparing the restoration application and as soon as the restoration application was prepared, she filed restoration application on 14-1-2019. The applicant No. 1 is a lady having 8 years old daughter. They have no means for their maintenance. Therefore, looking to their miseries, learned Family Court ought to have allowed the application for restoration, but it has arbitrarily dismissed the application which is erroneous and not sustainable in the eye of law.

4. Learned counsel for the non-applicant submits that the applicant has filed restoration application with a long delay without mentioning sufficient reason for such a long delay. Therefore, learned Family Court has not committed any error in dismissing the application.

5. I have heard learned counsel for both the parties, perused the documents placed on record and considered the submissions made by counsel for both the parties.

6. A perusal of the impugned order shows that after dismissal of the MJC(Cr.) No. 49/2012 on 24-9-2018, application for certified copy was filed on 26-9-2018 which was supplied to her on 5-11-2018. Thereafter, she filed the application on 14-1-2019 i.e. after 70 days of receiving the certified copy. These facts show that the applicants are not disinterested to their case.

7. Since the applicants are mother and daughter and the case pertains to maintenance to them under Section 125 of the Cr.P.C., which is a benevolent provision to provide maintenance to the

persons who have no means to maintain themselves, therefore, learned trial Court ought to have considered all these facts sympathetically while deciding the application.

8. Looking to the above facts, I am inclined to allow this revision petition. Accordingly, the revision is allowed and the impugned order dated 1-2-2021 passed by the Family Court, Surajpur, in MJC (Cr.) No. 189/2019 is set aside. The MJC (Cr.) No. 189/2019 is restored to its original number. The applicants are permitted to file an application under Section 5 of the Limitation Act for condonation of delay in filing the said MJC. The learned Family Court is directed that if such an application for condonation of delay is filed, the same shall be considered and decided afresh in accordance with law taking a liberal view.

9. Learned counsel appearing for both the parties are directed to inform their respective parties to appear before the Family Court, Surajpur on or before 4-10-2021 to ascertain the date fixed by the said Court.

**Sd/-
(NK Chandravanshi)
Judge**

Pathak/-