

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 732 of 2020

Smt. Teejkunwar Karsh, W/o. Shri Laxman Prasad Karsh, aged about 63 years, R/o. Village Bhagodih, Police Station -Baradwar, Tahsil Sakti District Janjgir Champa, Chhattisgarh.

---- Applicant

Versus

Laxman Prasad Karsh, S/o. Shri Hiralal Karsh, aged about 65 years, Retired Employee (Driver) Of C.S.P.D.C.L. Lastly posted at office of Assistant Engineer, C.S.P.D.C.L. Jashpur, District Jashpur Chhattisgarh. R/o. Bhagodih, Police Station Baradwar, Tahsil Sakti, District Janjgir Champa Chhattisgarh Present Address Behind Rest House Ward No. 08, Patthalgaon, Police Station Patthalgaon, District Jashpur Chhattisgarh

-----Respondent

For Applicant : Mr. Rishi Rahul Soni, Advocate

For Respondent : Mr. Ajeet Yadav, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

29/01/2021

1. This revision petition has been brought being aggrieved by the order dated 14.01.2020, passed by the learned Judge, Family Court, Sakti, District – Janjgir-Champa (C.G.) in unregistered case between Smt. Teejkanwar and Laxman Prasad Karsh, dismissing the application filed by the applicant under Section

125 (3) of Cr.P.C. for non-prosecution and also on merits.

2. It is submitted by the learned counsel for the applicant that the applicant could not give appearance on the date of hearing for which, she has bonafide reasons. The application under Section 125 (3) of Cr.P.C. has been dismissed not only for non-prosecution but also on merits by passing a detailed order, which was not at all called for. Hence, the order passed is not sustainable.
3. Counsel for the respondent submits that the applicant has made false claim of arrears of maintenance, whereas, the respondent has made payments of maintenance to the applicant time to time. The learned Family Court has not committed any error.
4. Considered on the submissions. On perusal of the impugned order, it is found that non-prosecution was not only the reason for which the order of dismissal has been passed. It has been held in the order that execution application was not maintainable for the reasons given. This kind of observation should not have been made by the Family Court in absence of one of the parties. Further looking to this fact that, it is the parties, who themselves give appearance before the Family Court, therefore, liberal view should have been taken instead of dismissing the application for non-prosecution. Hence, for this reason, this Court is of the view that the impugned order is not sustainable and it is liable to be set-aside.

5. Accordingly, the criminal revision petition is allowed. The impugned order dated 14.01.2020, passed by the learned Judge, Family Court, Sakti, District – Janjgir-Champa (C.G.) is set-aside, the proceeding between the parties U/s. 125 (3) of Cr.P.C. is restored, the parties are directed to give appearance before the Family Court on 15.02.2021.

Sd/-
(Rajendra Chandra Singh Samant)
Judge