

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 796 of 2014****Order reserved on 07.01.2021****Order pronounced on 11.02.2021**

Sandeep Kumar Prasad, son of J.N.Prasad, aged about 34 years, resident of Block No. 19, Plot No. 6, Nehru Nagar, Bhilai, District Durg, at present Quarter No. B-20, Mahakali Colliery, Post Babupet, Police Station and District Chandrapur (Maharashtra).

---- Applicant**Versus**

Smt. Reena Prasad, wife of Sandeep Kumar Prasad, aged about 30 years, resident of near School Gurudwara, Ambikapur, District Sarguja, CG

----Non-applicant

For Applicant	:	Ms. Pragya Pandey, Adv.
For Non-applicant	:	Ms. Priyanka Mehta, Adv.

CAV Order by Hon'ble Smt. Justice Vimla Singh Kapoor

The Order under challenge in this revision petition is the one which was passed on 30.08.2014 by learned Family Court, Ambikapur, District Sarguja in Misc. Criminal Case No. 04/2014 dismissing the application filed by the applicant/husband under Section 126 (2) of the Code of Criminal Procedure for setting aside the ex parte order dated 17.08.2012 passed by learned Family Court, Ambikapur in Misc. Criminal Case No. 01/2012.

2. There is no dispute that the non-applicant herein namely Smt. Reena Prasad is the legally wedded wife of applicant Sandeep Kumar Prasad. The parties hereinafter would be referred to as the wife and husband, for convenience.

3. The facts leading to the disposal of this revision petition in brief are that having been fed up with the frequent dowry demands, indifferent attitude and the tortuous act of the husband and his family members, the wife moved an application under Section 125 of the Code of Criminal Procedure (for short the "Code"). The wife has pleaded in the application under Section 125 of the Code that being an un-employed woman, it is extremely difficult for her to eke out the livelihood whereas the husband being in the employment of WCL as foreman earns Rs. 40,000/- per month, and therefore, let he be directed to pay a sum of Rs. 10,000/- per month as maintenance.

4. The documents and order-sheets of the case go to show that in spite of service of notice on the husband, he did not turn up to appear in the maintenance proceedings. This non-appearance of the husband made the Family Court proceed ex parte against the husband by order dated 18.07.2012 and then after recording the evidence of the wife allowed the application under Section 125 of the Code in part vide order dated 17.08.2012 granting monthly maintenance of Rs. 5,000/- in her favour. Meanwhile, the husband challenged the ex parte order dated 17.08.2012 by way of Criminal Revision No. 740/2012 filed before the High Court on 07.11.2012 and subsequently withdrew the same on 13.11.2013 with liberty to file an application under Section 126 (2) of the Code. Thereafter, on 06.01.2014 the application under Section 126 (2) of the Code was filed challenging the ex parte order dated 17.08.2012 by taking innumerable grounds of the serious ailment of his father requiring his constant vigil etc which rendered him incapable of appearing in the Court. Learned Family Court vide order under challenge in this revision dated 30.08.2014 however rejected the application filed by

the husband under Section 126 (2) of the Code by holding that the same was barred by limitation and that he did not even file an application for condonation of the delay occasioned in filing the application under Section 126 (2) of the Code.

5. Counsel for the applicant submits that the dismissal of the application under Section 126 (2) of the Code is based on wrong calculation of limitation period. As regards non filing of application for condonation of delay, she submits that the husband was under the impression that the limitation is to be counted from the date of order passed by the High Court on 13.11.2013 in Criminal Revision No. 740/2012, and in such a situation if he was under the bona fide wrong assumption, the Family Court should have given him at least one opportunity to file an application for condonation of delay. Yet another submission on behalf of the husband is that while considering the application under Section 126 (2) of the Code, learned Family Court should have adopted a liberal approach than dismissing the application on the ground of limitation.

6. On the other hand, supporting the order impugned counsel appearing for the wife submits that the limitation to get the ex parte decree set aside, as per Section 123 of the Limitation Act, has to be counted from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree. She submits that in the application under Section 126 (2) of the Code itself the husband has admitted the receipt of notice to appear in the maintenance proceedings on 18.07.2012 but he could not appear on account of illness of his father, and therefore the limitation is to be counted from the date of ex parte order dated 17.08.2012 and not from the date of knowledge thereof. Counsel for the wife further submits that the period

prescribed for getting the ex parte order set aside in a maintenance case would start from the date on which it was passed which in this case is 17.08.2012, but the husband filed the application for the said purpose under Section 126 (2) of the Code on 06.01.2014 i.e. with the delay of more than one and a half year, that too without filing an application for condonation of delay. She submits that the counting of limitation by the husband from the date on which he withdrew the revision in the High Court i.e. 13.11.2013 is wholly misconceived and is not permissible under section 123 of the Limitation Act.

7. Having heard counsel for the parties and perused the material on record this Court has no hesitation to say that in spite of having received the notice for his appearance before the Family Court on 18.07.2012 the husband did not appear purportedly on the ground of illness of his father and therefore was proceeded ex parte and then after recording the evidence of the wife and her witnesses an ex parte order was passed on 17.08.2012 granting maintenance of Rs. 5000/- in her favour. The period prescribed under Section 126 (2) of the Code for moving an application to get an ex parte order passed in a maintenance case set aside is three months from the date on which it was passed which in this case is 17.08.2012. In other words, the application under Section 126 (2) of the Code was to be filed within three months from 17.08.2012. However, the husband misconstruing the provision filed the said application on 06.01.2014 i.e. with a delay of over one and a half year. One of his standpoints that the limitation in this case would start from 13.11.2013 when the revision filed by him in the High Court against the order dated 17.08.2012 was withdrawn, is not palatable to this Court in the light of the provisions of the Section

126 of the Code as also that of the Limitation Act. Furthermore, the husband did not even file an application for condonation of delay under Section 5 of the Limitation Act to derive the benefit of Section 14 of it seeking exclusion of the period from 07.11.2012 (when the revision was filed in the High Court) to 13.11.2013 (when it was withdrawn by the husband).

8. The aforesaid factual and legal aspects of the case and also the judicial pronouncement in the matters of *Sneh Gupta v. Devi Saroop and others* (2009) 6 SCC 194 and *Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar* 2003 Supp(2) SCR 72 referred to by the counsel for the wife, this Court does not see any illegality or irregularity in the order impugned rejecting the application filed by the husband under Section 126 (2) of the Code warranting any interference in this revision petition. The same being without any substance is liable to be and is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)

Judge