

(2018) 02 CHH CK 0113

Chhattisgarh High Court

Case No: Criminal Revision No.1163 Of 2017

Reeta Banjare

APPELLANT

Vs

Gaukaran Banjare

RESPONDENT

Date of Decision: Feb. 6, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 125, 126(2)
- Code Of Civil Procedure, 1908 - Order 9 Rule 13

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: N.K. Kashyap, D.G. Kela

Final Decision: Dismissed

Judgement

Arvind Singh Chandel, J

1. This is an admitted revision. Since a short question is involved to be adjudicated in this revision, it is decided finally at this stage.

2. The revision has been preferred against the order dated 15.11.2017 passed by the Judge, Family Court, Janjgir, District Janjgir-Champa in

Miscellaneous Criminal Case No.48 of 2017, whereby the Family Court has allowed the application under Order 9 Rule 13 of the Code of Civil

Procedure (henceforth 'CPC') read with Section 126(2) of the Code of Criminal Procedure (henceforth 'CrPC') and the ex parte order dated

28.1.2017 has been set aside.

3. Facts of the case, in short, are that an application, being Case No.229 of 2016 moved by the Applicant/wife for grant of maintenance under Section

125 CrPC was decided by the Family Court on 28.1.2017 directing the Respondent/husband to pay a maintenance of Rs.8,000/- per month to the Applicant/wife. Thereafter, the Respondent/husband filed an application under Order 9 Rule 13 CPC read with Section 126(2) CrPC on the ground that he is working in Central Reserve Force and is posted in the security arrangements and, therefore, he could neither appear before the Family Court nor could inform his Counsel. He prayed for setting aside of the ex parte order dated 28.1.2017. The said application has been allowed vide the impugned order dated 15.11.2017. Hence, this revision by the wife.

4. Learned Counsel appearing for the Applicant/wife argued that the Family Court, without properly appreciating the evidence and material available on record, has passed the impugned order. The impugned order has been passed in an arbitrary manner. The Family Court has failed to see that the Respondent/husband had knowledge about the proceedings of the original case and he did not appear before the Court deliberately.

5. On the other hand, Learned Counsel appearing for the Respondent/husband submitted that the impugned order passed by the Family Court is a well reasoned order and, therefore, the same does not warrant any interference by this Court.

6. I have heard Learned Counsel appearing for the parties and perused the material available on the record with due care.

7. A bare perusal of the material available on the record reveals that on 25.1.2017 the Respondent/husband did not appear before the Family Court, therefore, the matter was proceeded ex parte against him and on 28.1.2017 the ex parte order granting the maintenance in favour of the Applicant/wife was passed against the Respondent/husband by the Family Court. It is also clear that the Respondent/husband, who was basically posted at Sukma (Chhattisgarh), had gone out for attending a training programme in Tamil Nadu held with effect from 20.1.2017. Therefore, the ground raised by him for his non-appearance before the Family Court on 25.1.2017 and 28.1.2017 is bona fide and the Family Court has rightly allowed his application under Order 9 Rule 13 CPC read with Section 126(2) CrPC. I find that the impugned order does not call for any interference by this Court.

8. Consequently, the revision, being devoid of any merit, is dismissed.

9. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.