

(2024) 02 CHH CK 0022**Chhattisgarh High Court****Case No:** Criminal Revision No. 1044 Of 20 23

Shiv Kumar Sahu

APPELLANT

Vs

Rekha Bai Sahu

RESPONDENT

Date of Decision: Feb. 12, 2024**Acts Referred:**

- Code of Civil Procedure, 1908 - Section 151, Order 8 Rule 1A, Order 8 Rule 1A(3)
- Code Of Criminal Procedure, 1973 - Section 125

Hon'ble Judges: Parth Prateem Sahu, J**Bench:** Single Bench**Advocate:** F.S. Khare, C.R. Sahu**Final Decision:** Partly Allowed**Judgement**

1. This Criminal Revision is filed against the order dated 17.08.2023, passed by First Additional Principal Judge, Family Court, Raipur, C.G., whereby learned Family Court has dismissed the application submitted by applicant for granting of opportunity of leading evidence under Order 8 rule 1A read-with Section 151 of CPC.

2. Learned counsel for applicant submits that applicant and non-applicant herein are husband and wife. Non-applicant filed an application under Section 125 of CrPC seeking maintenance before the Family Court. In the proceedings, applicant herein has caused appearance, submitted reply and has also examined himself as witness and the case was fixed for recording of the defence witnesses on 09.11.2022. On the said date, applicant herein appeared before the Family Court in presence of non-applicant herein/ applicant and has prayed for time for producing his rest of the witnesses. Learned Family Court considering the submission and prayer had granted time and fixed the case for recording of the remaining witnesses of non-applicant therein by fixing the date on 03.12.2022. He contended that from the order dated 09.11.2022 it is reflecting that at later point of time applicant therein ie., wife again appeared before the Family Court and raised objection on granting time. Upon which learned Family Court without issuing notice to applicant herein has closed the right of applicant to lead further evidence and fixed the case for final arguments on 07.01.2023. He further contended that during pendency of proceedings under Section 125 of CrPC, applicant herein came to know that non-applicant wife had performed second marriage and in support of the said fact he wanted to place on record documents of customary divorce between applicant and non-applicant and further to produce evidence of second marriage of non-applicant, which application was also dismissed by impugned order dated 17.08.2023. It is the contention of learned counsel for applicant that if the right of lead evidence of applicant is not set aside and he is not permitted to produce additional documents, the right to defence of applicant will be adversely affected.

3. Learned counsel for non-applicant raised an objection to the submission of learned counsel for applicant and would submit that even after granting sufficient time, applicant has not produced rest of his evidence. He contended that the evidence of applicant is already recorded by the Family Court. Submission of learned counsel for applicant that non-applicant herein has performed second marriage is not correct and is without any basis.

4. I have heard learned counsel for the parties.

5. Perusal of order dated 09.11.2022 would show that on that date initially applicant and non-applicant appeared before the Family Court and during course of hearing non-applicant therein prayed for time which was allowed and case was further fixed for 03.12.2022 for recording of the evidence of remaining witnesses of non-applicant therein. The order-sheet would further reveal that in the post lunch session, applicant therein again appeared before the Court and has raised objection on grant of time for recording of rest of the witnesses. In absence of non-applicant therein ie., applicant, the learned Family Court has closed the right of applicant herein to examine his other witnesses which in the facts of the case appears to be arbitrary and illegal. When once the Court has considered the prayer for adjournment and while adjourning the case fixing the case for further hearing and examination of remaining witnesses on 03.12.2022, learned court below ought not to have passed the order closing the right of applicant to lead further evidence on the same day in absence of applicant, hence, the said order is not sustainable and it is hereby set aside.

6. Sofar as, the order dated 17.08.2023 is concerned, the Family Court has dismissed the application under Order 8 Rule 1A read-with Section 151 of CPC. In the said application, applicant has pleaded that there was customary divorce between applicant and non-applicant and after seeking divorce from the applicant, non-applicant performed second marriage with one Parasram Sahu resident of village Karel (Badi), Tahsil Magarlod, Kergaon, District Dhamtari, C.G. and further enclosed the certificate issued by Community Members as also the copy of agreement executed by the non-applicant and Parasram Sahu.

7. The provisions of Order 8 Rule 1A CPC talks of Duty of defendant to produce documents upon which relief is claimed or relied upon by him. Order 8 Rule 1A(3) provides that if some documents on which the defendant wanted to rely upon and could not able to produce the same in time, then prior leave of the court is required for receiving the said document in evidence. Hon'ble Supreme Court in the case of Sugandhi (dead) by LRs vs. P. Rajkumar (represented by his power agent Imam Oli) reported in (2020) 10 SCC 706 has observed thus:

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

8. The document which the applicant wants to rely upon appears to be important to decide the issue which is the subject matter of Section 125 pending before the Family Court and therefore the Family Court without considering the nature of document which the applicant wants to place on record, the nature of proceedings, the Court below erred in rejecting the application. The order passed by learned Court below is arbitrary and illegal, hence, it is not sustainable and accordingly the order dated 17.08.2023 is also set aside.

9. Learned counsel for the parties vehemently submit that the case is still pending for consideration of final arguments.

10. In the aforementioned facts of the case, order dated 03.12.2022 and 17.08.2023 are hereby set aside. Learned Family Court is directed to provide an opportunity to applicant herein/ non-applicant before Family Court to examine remaining witnesses and to accept the document(s) which he wanted to rely upon and placed along with application under Order 8 Rule 1A read-with Section 151 of CPC dated 11.07.2023.

11. For the foregoing discussion, this revision is allowed in part.