

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.538 of 2015**

Rupesh @ Rupeshwar Patel, S/o Khageshwar Patel, aged about 43 years, Caste-Adharia, R/o Khairpali, P.S. Ambabhauna, District Bargarh (Orissa) at present Employee State Insurance Corporation, Office Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)

---- Petitioner

Versus

Ku. Siddhi Patel, D/o Rupesh @ Rupeshwar Patel, aged about 11 years, through her mother & natural guardian Smt. Chitra Patel, R/o M.2/183, F-1 Kabirnagar, Raipur, Tahsil & District Raipur (C.G.)

---- Respondent

For Petitioner : Mr. Pradeep Saxena, Advocate.

For Respondent : Not noticed.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/07/2015

- (1) Impugning the legality, validity and correctness of the order dated 16-4-2015 passed by the Judge, Family Court, Raigarh in Criminal MJC No.F-41/2014, the petitioner / husband has filed this revision under sub-section (4) of Section 19 of the Family Courts Act, 1984 (for short 'the Act of 1984') by which his application under Section 13 of the Act of 1984 has

been rejected by the said Court.

- (2) Imperative facts necessary for the disposal of this revision are as under: -

(2.1) In an application for enhancement of the amount of maintenance allowance by the respondent herein, the Family Court permitted the respondent herein to take the assistance of legal expert as *amicus curiae* leading to filing of application under Section 13 of the Act of 1984 by the petitioner herein stating *inter alia* that the petitioner be permitted to take the assistance of legal expert as *amicus curiae*, as he has no legal knowledge to conduct the proceeding. The Family Court by its impugned order rejected the application holding *inter alia* that examination and cross-examination of the respondent has already been concluded and, therefore, the application is substance-less. Against the said order, this revision has been filed by the petitioner / husband.

- (3) Mr. Pradeep Saxena, learned counsel appearing for the petitioner, would submit that the Family Court is absolutely unjustified in rejecting the application of the petitioner seeking assistance of legal expert as *amicus curiae*, as Section 13 of the Act of 1984 does not

absolutely bar the representation of Advocate(s) to appear on behalf of the parties, though the party to such proceeding is not entitled “as of right” to be represented by legal practitioner. He would further submit that the Family Court has already permitted the respondent / wife to be represented by a legal expert as *amicus curiae* and, therefore, the Family Court is absolutely unjustified in rejecting the application filed by the petitioner to take the assistance of legal expert as *amicus curiae* as such, the order be set aside and the petitioner be permitted to take the assistance of legal expert as *amicus curiae*.

- (4) I have heard learned counsel for the petitioner and considered the rival submissions made herein.
- (5) In order to consider the plea raised, it would be appropriate to notice Section 13 of the Act of 1984 which provides as under: -

“13. Right to legal representation-
Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae”

- (6) Dictionary meaning of the word 'right' in the context in

which it is used in Section 13 of the Act of 1984, is as under: -

“Chambers: just or legal claim; what one has a just claim to.

Webster's : Third New international Dictionary : Something to which one has just claim; a power or privilege vested in a person by the law to demand action or forbearance at the hands of another; a legally enforceable claim against another that the other will do or will not do a given act; a capacity or privilege the enjoyment of which is secured to a person by law.

Wharton's Law Lexicon : It is a liberty of doing or possessing something consistently with law.

The Law Lexicon by P. Ramanatha Aiyar : A lawful title or claim to anything, property, prerogative privilege.

- (7) The expression “as of right” used in Section 13 of the Act of 1984 also finds place in Section 15 of the Indian Easement Act. It is well known principle of interpretation of statutes that use of same words in similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute. When once certain words in an Act of Parliament have received a judicial construction and the Legislature has repeated them, the Legislature must taken to have used them according to the meaning which a court of competent jurisdiction has given to them.

- (8) Way back, the Constitution Bench of the Supreme Court in the matter of **P. Vajravelu Mudaliar v. The Special Deputy Collector for Land Acquisition, West Madras and another**¹, relying on Craies on Statute Law, held as under:-

“There is a well-known principle of construction that where the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has judicially interpreted unless a contrary intention appears.”

- (9) The correct meaning of the first part of Section 13 of the Act of 1984 would be that no party to suit or proceeding before a Family Court can make a legal claim to be represented by legal practitioner. The representation by legal practitioner will, therefore, depend upon the discretion of the Family Court. The Section does not impose a complete bar on the representation by legal practitioner. The proviso to Section 13 of the Act of 1984 gives jurisdiction to the Family Court that in appropriate cases, in the interest of justice, the said court may permit a party to be represented by the legal practitioner.
- (10) Representation of legal practitioner before the Family

¹ AIR 1965 SC 1017

Court in the light of Section 13 of the Act of 1984 also came to be considered before the Division Bench of Bombay High Court in the matter of Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi². The Bombay High Court considered the issue in great detail and concluded that Section 13 of the Act of 1984 does not prescribe a total bar to the representation by legal practitioner and the proviso to Section 13 makes provision for situation where the Court may seek the assistance of legal expert as *amicus curiae*, and has held as under:-

“17. A strong grievance has been made before us, in several cases, that have come up in appeal, from the Family Courts at Pune and at Bombay that the representation by Advocates is not being permitted and that avoidable situations have arisen because the cases have gone by default and have had to be either remanded by the High Court or entertained in appeal. A perusal of S. 13 of the Act indicates that a party to a proceeding before the Family Court shall not be entitled as of right to be represented by a legal practitioner. It is necessary to clarify that S. 13 does not prescribe a total bar to representation by a legal practitioner which bar would itself be unconstitutional. The intentment of the Legislature obviously was that the problems or grounds for matrimonial break-down or dispute being essentially of a personal nature, that it may be advisable to adjudicate these issues as far as possible by hearing the parties

² AIR 1991 Bombay 105

themselves and seeking assistance from Counsellors. The Section also makes provision for a situation whereby the Court may seek the assistance of a legal expert as *amicus curiae*. It is a well-known fact that the adjudication of a complicated or highly contested matrimonial dispute in the light of the law and interpretation of provisions by different Courts over a period of time, would require in given cases assistance from a legally trained mind and for this purpose, the Court has been empowered to seek the assistance of a legal expert.

18. We are, however, informed that as far as uneducated and poor persons are concerned that they are being totally handicapped in the conduct of their cases for want of legal assistance. Even as far as persons coming from the educated, and professional strata are concerned, the obvious difficulty that is involved, namely the drafting of applications and pleadings in consonance with Court requirements and the ability to conduct an examination-in-chief or a cross-examination are skills which one cannot expect of a lay person. The inevitable result is that the parties are handicapped resulting in a possible miscarriage of justice, not to mention delays and the attendant problem of having to take the matter in appeal to the High Court. This is not something which is within the ability of all the litigants. It would, therefore, be a healthy practice for the Family Court at the scrutiny stage itself, to ascertain as to whether the parties desire to be represented by their lawyers and if such a desire is expressed at this or any subsequent stage of the proceedings, that the permission be granted if the Court is satisfied that the litigant requires such assistance and would be handicapped if the case is not permitted. We are conscious of the fact that an appeal from the Family Court lies to the Division Bench

of the High Court and a situation should not arise whereby at the appeal stage when the parties are represented by Advocate, that it is disclosed that the evidence or pleadings have not been in consonance with the legal requirements or that the replies or cross-examination are inadequate. It is too much to expect of lay litigants to be able to study the laws, rules, acquaint themselves with Court procedures and to conduct a trial of their own and at the same time be able to place before, the Court the relevant case law.

19. We are fortified in this view by another aspect which is peculiar to matrimonial proceedings, namely, the fact that as far as issues such as custody of children, visiting rights, maintenance, alimony, apportionment of property etc., are concerned that the parties may not be in a position to protect their own interest or that they may not be in a position to visualize future problems or requirements and would, therefore, either give up their rights or not be in a position to agitate or safeguard them. The inevitable consequences would be either undue hardship or future litigation, both of which deserve to be avoided. We are, therefore, inclined to agree with the grievance made before us that the Family Court ought to give due credence to the desire of litigants where legal representation is concerned. In fact, R. 37 of the Family Courts (Court) Rules, 1988 reads as follows:

"37. Permission for Representation by a Lawyer: The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact, if the Court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reasons. The reason for

granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just and necessary".

It is, therefore, patently clear that reading [S. 13](#) with R. 37 that adequate provision has been made for legal representation and in the absence of convincing reasons, such permission ought not to be turned down."

- (11) I respectfully agree with the statement of law laid down by Bombay High Court in the above stated case. Thus, it is quite vivid that no party can claim as a matter of right a right to be represented through legal practitioner and it is open to the Legislature to put restrictions on such representation by such legal practitioner having regard to the aims and objects of the Act. In the matter of **Lingappa Pochanna v. State of Maharashtra**³, their Lordships of the Supreme Court dealing with the challenge held that the only fundamental right under the Constitution to be represented by a lawyer is under Article 22 (1) of the Constitution of India' and held as under in paragraph 35:-

"Now it is well-settled that apart from the provisions of Art. 22 (1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Art. 22 (1) by

³ AIR 1985 SC 389

which an accused who is arrested detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e. suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner.”

- (12) Thus, from the basis of aforesaid discussion, it appears that Section 13 of the Act of 1984 pertinently deals with appointment of legal practitioner by the parties. Proviso to Section 13 deals with power of the Family Court to appoint a legal practitioner as *amicus curiae*. Section 13 only prohibits that party cannot claim to appoint legal practitioner to plead his / her cause as a matter of right, but an exception is carved out in proviso vesting the jurisdiction in the Family Court to seek the assistance of a legal practitioner by appointing any Advocate as *amicus curiae* to assist the Court, as such Section 13 does not create a total embargo or prohibition on the parties before the Family Court to engage an Advocate(s).
- (13) After having examined the legal position with reference to the representation of legal practitioner in a proceeding before the Family Court turning back to the facts of the case in hand, the Family Court has rejected

the application of the present petitioner only on the ground that the respondent has already been examined. The Family Court has failed to consider the application under Section 13 of the Act of 1984 in its proper perspective and rejected the application on wholly untenable ground. Consequently, the impugned order is set aside being contrary to law and the Family Court is directed to reconsider the application under Section 13 of the Act of 1984 filed by the petitioner afresh in the light of observation made hereinabove in this order after affording due opportunity of hearing to the parties.

- (14) Accordingly, the revision is disposed of with a direction to the Family Court to consider afresh the application filed by petitioner under Section 13 of the Act of 1984 expeditiously. Liberty is reserved in favour of the respondent to make an application for modification if she feels aggrieved by this order. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma/-

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.538 of 2015

Rupesh @ Rupeshwar Patel

---- Petitioner

Versus

Ku. Siddhi Patel

---- Respondent

HEAD NOTE

Section 13 of the Family Courts Act, 1984 does not prescribe total bar to representation by legal practitioner.

कुटुंब न्यायालय अधिनियम 1984 की धारा 13 विधि व्यवसायी के प्रतिनिधित्व किए जाने का पूर्ण वर्जन उपबंधित नहीं करता है।