



CGHC010343152023



2026:CGHC:28788

NAFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

### WP227 No. 797 of 2023

Dr. Prajwal Pradeep Soni S/o Shri Pradeep Soni Aged About 43 Years At-  
Soni Multi Sepecialty Hospital, Abhanpur, P/s Abhanpur, District : Raipur,  
Chhattisgarh

... Petitioner

versus

Dr. Gurpreet Kaur W/o Dr. Prajwal Pradeep Soni Aged About 42 Years D/o  
Lt. Maninder Pal Singh, At- 61, Moti Lal Nehru Nagar, Bhilai, District : Durg,  
Chhattisgarh

---Respondent

(Cause title taken from Case Information System)

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Petitioner in person : Dr. Prajwal Pradeep Soni

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For Respondent : Mr. Ankur Agrawal, Advocate

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**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

### Order on Board

**09/07/2026**

- The present writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 16.08.2023 (Annexure P/1) passed by learned 1<sup>st</sup> Additional Principal Judge, Family Court, Raipur, in Case No. 91 of 2022, whereby the application under Order 7 Rule 11 of CPC filed by the petitioner has

been rejected and the maintainability of the application was kept pending for its adjudication after recording evidence of the parties.

2. The petitioner in person would submit that the respondent is his wife. Their marriage was solemnized in the year 2012 and out of their wedlock, their son is born. Subsequently, the matrimonial dispute arose between the parties, which is continued. With the allegation that on 28.06.2022, the petitioner forcefully took her son from her custody, she filed an application under Section 26 of the Hindu Marriage Act, 1955 before the learned Family Court, Raipur. The respondent-wife has also filed a WP(HC) No. 14 of 2022 before this Court, in which the parties were directed to appear before the learned Family Court and then the learned Family Court, after hearing the parties, passed an order and grant interim custody of the child with the respondent-wife. Since the application under Section 26 of the Hindu Marriage Act, 1955 is an interim application, it cannot be independently registered in the proceeding and no order can be passed for interim custody of the child. He filed an application on 26.11.2022 under Order 7 Rule 11 of CPC regarding maintainability of the application filed by the respondent-wife and rejection of the same. He would further submit that with respect to custody of child, the respondent-wife is required to file her application under Section 25 of the Guardians and Wards Act, 1890 and the application under Section 26 of the Hindu Marriage Act, 1955 is not maintainable. The learned Family Court rejected the application on the ground that the maintainability of the application is to be decided after recording evidence of the parties. When the application itself is not maintainable, all the subsequent proceedings is void ab initio and

there is no need to record evidence of the parties, therefore, the impugned order may be set aside and the application filed by the respondent-wife may be dismissed.

He would rely upon the judgment of **Hemlata Sahu v. Chetan Das Sahu**, 2015 (1) CGLJ 587, judgment dated 24.02.2026, passed by coordinate bench of this Court in WP(227) No. 808 of 2025 (**Dr. Gurpreet Kaur v . Dr. Prajwal Pradeep Soni**) and **Rajshri Agrawal @ Ramshri Agrawal and another v. Sudheer Mohan and others**, 2022 LiveLaw SC 864.

3. On the other hand, learned counsel appearing for the respondent, opposes the submissions made by the petitioner-in-person and would submit that, the present writ petition filed by the petitioner is not maintainable, as he has a remedy to file an appeal under Section 19 of the Family Courts Act, 1984 or Civil Revision under Section 115 of the CPC. When the statutory alternative remedy is available to the petitioner, the writ petition for exercising supervisory jurisdiction under Article 227 of the Constitution of India cannot be invoked. He would further submit that in reply to the application, the respondent-wife has made prayer that the application filed by her may be considered to be the application under Section 25 of the Guardians and Wards Act, 1890. Merely by quoting wrong provision of law, by itself is not sufficient to reject the application filed by the respondent-wife, particularly when she filed an application in person, who may be unaware about the correct provision of law. The reliefs and contents of the application are relevant for its consideration. The respondent-wife claimed custody of her minor son and in view of the welfare of

minor son and nature of application, the learned Family Court rightly registered the case as a separate application and has passed interim order of interim custody of the child of the respondent-wife. He would further submit that keeping in view the welfare of the child, the learned Family Court also granted the visitation right in favour of the petitioner-husband and has rightly rejected the application observing that the maintainability of the application is to be decided after recording evidence of the parties. He would further submit that no prejudice is being caused to the petitioner-husband and he has a right to defend either in the application under Section 26 of the Hindu Marriage Act, 1955 or under Section 25 of the Guardians and Wards Act, therefore, rejection of the application of the petitioner-husband is justified and his writ petition is liable to be dismissed.

He would rely upon the judgment of **K. Valarmathi and others v. Kumaresan**, 2025 SCC OnLine SC 985, **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others v. Tuticorin Educational Society and others**, 2019 (9) SCC 538 and the order dated 21.09.2022, passed by the Hon'ble Division Bench of this Court in FA (MAT) No. 125 of 2022 (**Jitendra Kumar Dewangan v. Smt. Neeti Dewangan and another**).

4. I have heard the petitioner-in-person and learned counsel for the respondent and perused the material annexed with the petition.
5. The respondent raised an objection regarding maintainability of the present writ petition in view of the provision of Section 19 of the Family Courts Act and Section 115 of the CPC. Before examining the merits of the challenge, it is necessary to consider the maintainability

of the present petition under Article 227 of the Constitution of India. The impugned order has been passed by the learned Family Court in exercise of its jurisdiction under the Family Courts Act, 1984. Section 19 of the Family Courts Act provides a statutory remedy of appeal against judgments and orders of the Family Court, while at the same time specifically excluding appeals against interlocutory orders. Further, by virtue of Section 19(6) of the Family Courts Act, the revisional jurisdiction under Section 115 of the CPC stands excluded in respect of proceedings before the Family Court. Thus, the legislative scheme clearly manifests that interlocutory orders passed by the Family Court are ordinarily not intended to be subjected to appellate or revisional jurisdiction, except in accordance with the limited supervisory jurisdiction of this Court under Article 227 of the Constitution. However, such supervisory jurisdiction is to be exercised sparingly and only in cases where the subordinate court has acted without jurisdiction, in excess of its jurisdiction, or has committed patent perversity resulting in failure of justice. In the present case, the impugned order merely postpones the adjudication of the objection regarding maintainability until the evidence of the parties is recorded and does not finally determine any substantive right of either party. Thus, interlocutory orders are ordinarily not intended to be subjected to appellate or revisional jurisdiction, except under Article 227 of the Constitution of India.

6. The main grievance of the petitioner is that the respondent-wife filed an application under Section 26 of the Hindu Marriage Act, 1955 seeking custody of the minor child though, according to him, the appropriate remedy was under Section 25 of the Guardians and

Wards Act, 1890, and therefore the application itself was liable to be rejected under Order 7 Rule 11 of the CPC. From perusal of the copy of the reply of the application of order 7 Rule 11 of the CPC, the respondent-wife has averred that the contents of the application is to be seen and merely quoting the wrong provision, her application cannot be dismissed. There is no *mala fide* intention of the respondent-wife to file the application by quoting wrong provision of Section 26 of the Hindu Marriage Act, 1955 and she prayed that her application may be considered under Section 25 of the Guardians and Wards Act, 1890.

7. It is a settled principle of law that merely because a litigant has quoted an incorrect provision of law or has failed to mention the correct statutory provision, the application cannot be rejected if the Court otherwise possesses jurisdiction and the relief sought can be traced to an appropriate statutory provision. The Court is required to examine the substance, pleadings and relief claimed in the application rather than the nomenclature or the provision mentioned therein.
8. In the case of **P.K. Palanisamy v. N. Arumugham**, (2009) 9 SCC 173, the Hon'ble Supreme Court has observed that:-

“27.....Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or

statutory authority had the requisite jurisdiction therefore.”

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29. In N. Mani v. Sangeetha Theatre it is stated :  
(SCC p. 280, para 9)

“ 9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

9. Thus, mention of a wrong provision of law or non-mention of the correct provision is not decisive where the power otherwise exists and the relief can be granted under law. The substance of the pleadings and the nature of the relief are determinative, and therefore the objection raised by the petitioner about maintainability of the application does not merit acceptance.
10. In the present case, a perusal of the application filed by the respondent-wife would show that the substance of the relief claimed is for restoration of custody of her minor child. Therefore, merely because the application referred to Section 26 of the Hindu Marriage Act, 1955, instead of Section 25 of the Guardians and Wards Act, 1890, the same could not have been rejected at the threshold, particularly when the respondent-wife had instituted the proceedings in person and has also specifically prayed before the Family Court that the application be treated as one under the appropriate

provision. The learned Family Court was, therefore, justified in considering the nature of the relief and the contents of the application rather than rejecting it solely on the ground of an incorrect provision.

11. The next question relates to the maintainability of the present petition under Article 227 of the Constitution of India. The petitioner has challenged an interlocutory order whereby the learned Family Court has merely declined to reject the application and has observed that the issue regarding maintainability would be considered while deciding the matter after recording evidence. The supervisory jurisdiction under Article 227 is intended to keep subordinate courts within the bounds of their authority and is not meant to correct every interlocutory order or substitute the High Court's view for that of the subordinate court. In **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai** (supra), the Hon'ble Supreme Court held that where an effective statutory remedy is available, the High Court should ordinarily decline to exercise its supervisory jurisdiction under Article 227 except in exceptional cases involving patent lack of jurisdiction or manifest perversity.
12. Similarly, in **Shalini Shyam Shetty v. Rajendra Shankar Patil**, (2010) 8 SCC 329, the Hon'ble Supreme Court held that Article 227 cannot be exercised as an appellate or revisional jurisdiction and interference is warranted only where there is gross failure of justice or patent perversity.
13. In the present case, the impugned order neither finally determines the rights of the parties nor suffers from any jurisdictional error. Rather, the learned Family Court has only deferred the issue

regarding maintainability to be considered along with the evidence. Such an approach cannot be said to be perverse or without jurisdiction so as to warrant interference under Article 227 of the Constitution of India.

14. Another significant aspect is that the dispute concerns the custody of a minor child. It is trite law that in all proceedings relating to custody or guardianship, the paramount consideration is not the legal rights of the parents but the welfare and best interest of the child. In **Gaurav Nagpal v. Sumedha Nagpal**, (2009) 1 SCC 42, the Hon'ble Supreme Court observed that "*the welfare of the child is the paramount consideration and the rights of the parents are subservient thereto*".
15. In **Yashita Sahu v. State of Rajasthan**, (2020) 3 SCC 67, the Hon'ble Supreme Court reiterated that custody disputes cannot be decided on technicalities and that the welfare of the child is the sole and dominant consideration.
16. It is also relevant to note that during the pendency of the same Family Court proceedings, the learned Family Court had passed an interim order granting custody of the minor child to the respondent-wife with visitation rights to the petitioner. The said interim order was challenged before this Court in WP(227) No. 808 of 2025 (**Dr. Gurpreet Kaur v. Dr. Prajwal Pradeep Soni**), wherein the Coordinate Bench, by judgment dated 24.02.2026, declined to interfere and upheld the interim arrangement and further directed the Family Court to know the wishes of the child, as to with whom he wants to live after entering into an effective conversation with him

and form an opinion as to with which of the parents, his welfare would be ensured. In these circumstances also, no useful purpose would be served by interfering with the impugned interlocutory order rejecting the petitioner's application under Order 7 Rule 11 CPC.

17. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Family Court has committed no jurisdictional error or patent illegality in rejecting the application filed by the petitioner under Order 7 Rule 11 of the CPC. Merely because the respondent-wife referred to an incorrect statutory provision would not render her application non-maintainable when the substance of the pleadings clearly discloses a claim for custody of the minor child and the Court is competent to consider such relief under the appropriate provision of law. The impugned order is only an interlocutory order leaving the question regarding maintainability to be adjudicated after evidence, and no exceptional circumstance is made out warranting interference under Article 227 of the Constitution of India.
18. Accordingly, the writ petition, being devoid of merit, deserves to be and is hereby **dismissed**.
19. No order as to costs.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
Judge

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