

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No. 121 of 2013**

Abhishek Mishra, S/o Ramesh Dutt, aged about 30 years, R/o Street No. 25, Sector-10, Bhilai, district Durg, Chhattisgarh.

---- Applicant**Versus**

Priyanka D/o Vipin Mishra, aged about 29 years R/o village Kot, P.S. & Tahsil Kasdol, district Balodabazar-Bhatapara, Chhattisgarh.

---- Respondent

For Applicant	:	Shri P.R. Patankar, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****21/07/2015**

(1) The Applicant has preferred the instant civil revision under Section 115 read with Section 151 of the Code Civil Procedure against the order dated 22.7.2013 passed in Civil Suit No. 09-A/2012 by the Learned Civil Judge, Class-I, Kasdol, District Raipur (now District Baloda Bazar-Bhatapara), Chhattisgarh.

(2) As per facts regarding instant civil revision, non-applicant filed a civil suit before Civil Judge, Class-I, Kasdol registered as Civil Suit No. 9-A/2012 wherein the non-applicant gave description of the articles and alleged *Stridhan* gift for ₹13,18,950/-. The non-applicant prayed for a declaration that she was entitled to receive all the articles, ornaments gifts and household articles given to the applicant at the time of marriage from the Applicant being *Stridhan*. She prayed for a declaratory decree in her favour alongwith cost of the suit. The Applicant filed his written statement before the Court below wherein he pleaded that the Petitioner filed Civil Suit No. 61A of 2012 before the Principal Judge, Family Court,

Durg, Chhattisgarh against the non-applicant for a decree of divorce for dissolution of marriage solemnized between them on 23.01.2011 under Section 13 sub-section (1) of the Hindu Marriage Act. The concerned Judge, Family Court vide its judgment dated 30.6.2012 allowed the suit and passed a decree for dissolution of marriage through a decree of divorce. The non-applicant also filed a civil suit bearing No. 3A of 2012 of the Hindu Marriage Act against the applicant on 25.9.2012 when the copy of the judgment passed by the family Court, Durg submitted before the First Additional District Judge, Baloda Bazar, Chhattisgarh thereafter as both of the parties were agreed to close the case pending before the First Additional District Judge, Baloda Bazar, it has been consented by both the parties. The Trial Court dismissed the suit concerned pending at Baloda Bazar. The applicant also pleaded in his written statement and denied the pleadings of the non-applicant and further pleaded that Court has no jurisdiction to hear the suit as proper court fees was not affixed. The non-applicant is entitled to file the suit as per provisions of the Hindu Marriage Act. There is no pecuniary jurisdiction vested with the Court to hear the suit and as the non-applicant never filed any application before the Family Court, Durg regarding return of *Stridhan* goes to show that there is no Stridhan lying with the applicant. The applicant filed an interim application Annexure-A/3 under Section 8 and 9 of the Court Fees and Suit Valuation Act read with Order 7 Rule 11 of the Code of Civil Procedure in which all the grounds mentioned in the written statement were raised and it was prayed that suit of the plaintiff be dismissed as there is no cause of action and the suit was barred by law and was not properly valued and court fees affixed. The trial Court after hearing both the parties passed the impugned order on 22.7.2013 and

held that it would be appropriate to formulate issues regarding the objections raised by the defendant, as the written statement also filed and the matter be judicially disposed of. With the aforesaid observation the trial Court dismissed the impugned application filed under Section 8 and 9 of the Court Fees & Suit Valuation Act read with Order 7 Rule 11 of the Code of Civil Procedure.

(3) Against the impugned order, the Applicant preferred this civil revision and had taken the grounds that order passed by the trial Court is illegal, incorrect and improper. The Court erred in holding that pleadings raised for rejection of the plaint be decided after framing all the issues and during judicial adjudication on behalf of the revisioner it was prayed that the impugned order be quashed, the trial Court may be directed to ask the non-applicant to pay the court-fees in accordance with law.

(4) Notice issued to non-applicant through dasti service has returned after its refusal.

(5) Civil revision is admitted for hearing and is heard finally.

(6) Learned Counsel for the Revisioner/ Applicant duly supported the grounds mentioned in the civil revision and submitted that trial Court ought to have formulated primary issues, after hearing arguments on those primary issues the trial Court ought to have decided those primary issues which are of such a nature that can be disposed of by hearing arguments of both the parties. Instead the trial Court passed an order and held that all those issues can be heard and disposed of after the completion of trial. The issues and the objections raised is of primary nature. Hence, the trial Court be directed to formulate primary issues to hear the arguments and disposed of the primary issues according to law.

(8) As the non-applicant is not represented, there is nothing to contradict or respond the prayer and facts mentioned by the Applicant in this behalf.

(9) For the purposes of appreciation for disposal of this instant civil revision, the material and documents annexed alongwith instant civil revision are perused.

(10) On a close scrutiny, it goes to show that revisioner/applicant by filing his written statement has raised objections, regarding suit valuation, proper court fees, suit was filed barred by law, pecuniary jurisdiction and maintainability of the suit. These issues can be disposed of by hearing both the parties. No evidence seems to be required to dispose of the above mentioned legal questions, objections and pleadings by the Applicant before the trial Court. Though the trial Court did not dismiss or reject the facts and the prayer made in the Annexure-A/3 as the revisioner has filed an application under Section 8 and 9 of the Court Fees & Suit Valuation Act read with Order 7 Rule 11 of the Code of Civil Procedure, but all the objections, issues and pleadings above mentioned are of primary nature. They are required to be disposed of after framing primary issues, hearing arguments and by an order of the trial Court on those primary issues. As per settled law if any issue can be disposed of while hearing the arguments only then those issues are not required to be kept pending until completion of the trial.

(11) On due consideration, while in agreement with the arguments advanced on behalf of the Revisioner/ Applicant, the instant civil revision is disposed of with the following directions to the trial Court:-

(i) The trial Court is directed to frame primary issues on the

following points if any applicable on :

- (a) Suit valuation.
- (b) Proper court fees.
- (c) Whether the suit filed by the non-applicant is barred by law.
- (d) Pecuniary jurisdiction.
- (e) Maintainability of suit.

(ii) On the basis of the pleadings in written statement, if any, after framing of the primary issues, to hear both the parties and to dispose of the matter in accordance with law.

(12) The revision is allowed to the extent indicated above.

(13) No order as to costs.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE