

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No. 19 of 2016**

Smt. Ritubala Kamde W/o Dauru Kamde aged about 23 years Occupation Not known R/o Ramnagar Behind Power House Ward No.27 Rajnandgaon Police Station Rajnandgaon Civil and Revenue District Rajnandgaon (Chhattisgarh)

---- Appellant**Versus**

Dron Kamde S/o Mahuram Kamde aged about 32 years Food Inspector R/o House No.G.A.D.G-5 R.E.S. Colony Sukma Tahsil and District Sukma (Chhattisgarh)

---Respondent

For Appellant : Shri Ajit Singh, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****27/01/2016**

1. At the very outset, Learned Counsel for the Appellant submits that year 2015 as mentioned in the pleadings with regard to Civil Suit No.97-A filed by the Respondent is an inadvertent error and it may be corrected to read as 2014. Permission is granted to make necessary correction in the memo of appeal during course of the day.
2. The present appeal has been preferred against the order dated 26.8.2015 in Civil Suit No.50-A of 2014 preferred by the Appellant for restitution of conjugal rights under Section 9 of the Hindu Marriage Act (hereinafter referred to as 'the Act'). The Respondent-husband has also filed Civil Suit No.97-A of 2014 for grant of divorce under Section 13 of the Act.
3. Learned Counsel for the Appellant submits that interim maintenance granted to her in Civil Suit No.97-A of 2014 at the rate of Rs.1500/- per month was grossly

inadequate. If the suit for divorce is allowed, the Appellant may be left without any source of maintenance.

4. No other challenge is laid to the order impugned.

5. We have considered the submissions and are not satisfied about maintainability of the present appeal. It is acknowledged that against the order for interim maintenance of Rs.1500/- per month in Civil Suit No.97-A of 2014, the Appellant has already preferred an appeal before this Court i.e. First Appeal (M) No.18 of 2016. Even if the divorce suit is allowed, the Family Judge can always award lumpsum maintenance. There cannot be two claims for maintenance between the same parties, one in proceeding under Section 13 of the Act and another under Section 9 of the Act. The Family Judge is directed to hear the suit for divorce and for restitution of conjugal rights together.

6. Since we find no reason to interfere with the order dated 26.8.2015, delay in filing the appeal is condoned and the appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE