

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FIRST APPEAL (M) NO. 5 OF 2016

Smt. Santoshi Rai, W/o Pradeep Rai, aged about 35 years, (Railway Employee), R/o Station Maroda, HSCL Colony, Ambedkar Chowk, Bhilai, Tehsil & District Durg (C.G.)

... Appellant

Versus

Pradeep Rai, S/o Late K.C. Rai, (Retired BSP Employee), R/o Street no. 32, Qtr. no. 6/D, Sector 5, Bhilai Nagar, Tehsil & District Durg (C.G.)

... Respondent

For Appellant	:	Mr. Jitendra Gupta, Advocate.
For Respondent	:	Mr. Anand Shukla, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

30/03/2016

1. The present appeal arises from order dated 5.11.2015 passed by the Third Additional Principal Judge, Family Court, Durg, granting interim visitation rights to the Respondent by requiring the Appellant to bring the two minor children at the Consultation Centre of the Woman Police Station, Durg, on every fourth Sunday between 11:00 am to 12:00 pm. In the event of misbehaviour with the children by the Respondent, the officer in-charge would report the matter to the Third Additional Principal Judge.

2. We have considered the respective submissions on behalf of the parties and refrain from dealing with the same on merits lest it may prejudice either of them in view of the nature of the order proposed to be passed by us.

3. It is not in dispute that at the time of marriage, the Appellant was approximately 27 years of age while the Respondent was over 50 years of age. Allegedly she had conceived before the marriage while they were still in an amorous relationship. He has now filed an application for restitution of conjugal rights in which the application was filed by him under Section 26 of the Hindu Marriage Act.

4. A case concerning custody of minor children between the warring parents calls for extreme sensitivity on part of the Judge. Minor children in the battle for custody cannot be treated as chattel to be moved around in a manner which may not be conducive to the interest of the minor children who are at a very impressionable young age of six years and two years respectively. In 2010 (14) SCC 274 (Ashish Ranjan v. Anupma Tandon) it was observed as follows:-

“It is settled legal proposition that while determining the question as to which parent the care and control of a child should be given, the paramount consideration remains the welfare and interest of the child and not the rights of the parents under the statute. Such an issue is required to be determined in the background of the relevant facts and circumstances and each case has to be decided on its own facts as the application of doctrine of stare decisis remains irrelevant insofar as the factual aspects of the case are concerned. While considering the welfare of the child, the “moral and ethical welfare of the child must also weigh with the court as well as his physical well-being”. The child cannot be treated as property or a commodity and, therefore, such issues have to be handled by the court with care and caution, with love, affection and sentiments applying human touch to the problem. Though, the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.”

5. Judicial precedents abound for the manner in which a Judge is required to deal with the matter relating to custody of minor children. The Appellant was contesting the claim for visitation rights. At this stage we are not concerned about the acceptability or unacceptability of the

claims. The Family Judge had a duty to apply his mind to the issues raised rather than mere recital of the same followed by his conclusions.

6. We therefore set aside the order dated 5.11.2015 in its present form and direct the Third Additional Principal Judge, Family Court, Durg to finally decide the application under Section 26 of the Hindu Marriage Act filed by the Respondent on merits by a reasoned and speaking order within a maximum period of three months from the date of receipt and/or production of a copy of this order before him provided the parties cooperate. In the meantime, it shall be open for the parties to complete their pleadings on the application under Section 26. This order cannot be considered as any impediment in fresh application of judicial mind by the Family Judge.

7. The appeal is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge