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**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal (M) No.65 of 2015****Order Reserved on : 10.03.2017****Order passed on : 17.03.2017**

Dr. Chouleshwar Chandrakar, S/o Shri Bharat Lal Chandrakar, aged about 39 years, R/o Mathpara Main Road, Kachna (Saddu), P.S. Chouki Kachna, District Raipur (Chhattisgarh).

**---- Appellant****Versus**

Seema Chandrakar, W/o Dr. Chouleshwar Chandrakar, aged about 30 years, R/o F-13 Chakradhar Nagar Raigarh, District Raigarh, presently working as Civil Judge Class-II, Dalli Rajhara, District Balod (Chhattisgarh).

**----Respondent**

For Appellant : Mr. S.C. Verma, Advocate

**Hon'ble Shri Pritinker Diwaker, Acting Chief Justice**  
**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board****Sanjay K. Agrawal, J.**

(1) Appellant/husband herein is a plaintiff before the Principal Judge, Family Court, Raipur. He has filed suit/application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against her wife/respondent herein. During the pendency of the suit, he moved an application for grant of visitation right with his son namely Risabh residing with respondent herein, the said application has been rejected by learned Principal Judge, Family Court, Raipur by the impugned order.

(2) Feeling aggrieved against that order, this appeal under Section

19(1) of the Family Court Act, 1984 (for short 'Act, 1984) has been preferred by the appellant/husband.

**(3)** Mr. S.C. Verma, learned counsel appearing for the appellant would submit that learned Principal Judge, Family Court has committed a legal error in rejecting the said application, therefore, the impugned order dated 10.04.2015 be set-aside and appellant be granted visitation right with his son Rishabh.

**(4)** None has appeared on behalf of the respondent/wife to oppose the appeal.

**(5)** We have heard learned counsel appearing for the appellant and considered his submission made hereinabove and perused the impugned order with utmost circumspection.

**(6)** The issue which arises for consideration is whether Principal Judge, Family Court is justified in refusing interlocutory application filed by the appellant herein thereby declined visitation rights with his son, in a suit instituted by him in which the appellant herein was only seeking substantive relief of restitution of conjugal right.

**(7)** The appellant/plaintiff has filed the suit seeking decree for restitution of conjugal rights against his wife/respondent herein, which is pending consideration before the jurisdictional Principal Judge, Family Court and no substantive relief of visitation rights has been claimed in that suit, and plaintiff/appellant only claimed relief of visitation rights with his son by way of interlocutory application and refusal of that application has been called in question in this appeal.

(8) It is well settled law that the interim order is granted in the aid and assistance of final relief and if the final relief is not available to the person seeking interim relief, then ordinarily, no interim relief can be granted in his favour.

(9) The Law on the point is well settled and that may be noticed herein profitably and gainfully. The Constitution Bench judgment of the Supreme Court in the matter of **State of Orissa v. Madan Gopal Rungta**<sup>1</sup> spelt out the scope and ambit of interim relief and held as under:-

“6.....An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding.”

(10) Following the above-stated Constitution Bench decision their Lordships of the Supreme Court in the matter of **Cotton Corporation of India v. United Industrial Bank**<sup>2</sup> reiterated the position of law in the following manner as under:-

“10.....It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be

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1 AIR 1952 SC 12

2 (1983) 4 SCC 625

granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.....”

(11) In the matter of **Ashok Kumar Lingala v. State of Karnataka and others**<sup>3</sup> the Supreme Court has reiterated the above-stated legal provision and held as under:-

“23. The power to make an interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction, against an order granting or refusing an interim order. The exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order; the interim order serving only as a step in aid of such final order.....”

(12) With the aforesaid parameters and principles of grant of interim relief, turning back to facts of the case it would appear that the plaintiff has filed suit/application under Section 9 of Hindu Marriage Act claiming substantive relief of restitution of conjugal rights and the Family Court has to consider the sole question and after consideration either to pass a decree for restitution of conjugal rights in his favour or to refuse the such decree as the case may be, but the Family Court is not called upon to adjudicate any right to custody including visitation right of the appellant's son in the suit as there is no such lis brought before the Court for adjudication and even after trial and full hearing no visitation rights can be granted to the appellant finally, therefore, relief which cannot be granted finally to the appellant at the conclusion of

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3 (2012) 1 SCC 321

trial cannot be granted in an interlocutory application at interlocutory stage as interlocutory relief sought for by the plaintiff/appellant cannot be granted being beyond the scope of main proceeding.

**(13)** Consequently, we do not find any merit in this appeal and same deserves to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-  
**(Pritinker Diwaker)**  
Ag. Chief Justice

Sd/-  
**(Sanjay K. Agrawal)**  
Judge

Laxmi