

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 39 of 2018**

(Arising out of order dated 30.10.2017 passed by the Family Court District-
Mahasamund in Civil Case No. 7A/2017)

- Giriraj Chandak Son of Bitthaladas Chandak, Aged About 38 Years R/o Ward No. 4, Tumgaon Road, Mahasamund, Tahsil And District Mahasamund, Chhattisgarh. --- **Petitioner**

Versus

- Smt. Rashi Chandak D/o Mahesh Kumar Dammani, Aged About 34 Years R/o Gulmohar Park, Ramnagar, Raipur, House No. G 39, Tahsil And District Raipur, Chhattisgarh. --- **Respondent**

For the petitioner : Mr. Gurudev I. Sharan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

11.01.2018

1. This petition is against the order dated 30.10.2017 passed by the Family Court, Mahasamund whereby the trial Court has invoked the jurisdiction u/s 23 (2) of the Hindu Marriage Act, 1955 and has summoned the wife to find out a solution by means of conciliation.
2. Learned counsel for the petitioner would submit that earlier the defendant wife has already proceeded exparte, therefore, no purpose would be served to call the wife again for conciliation as she may file application to set aside the exparte and at the fag end such application cannot be entertained. Consequently, the order dated 30.10.2017 requires to be set aside.
3. Section 23 (2)(b) of the Hindu Marriage Act reads as under:
23. Decree in proceedings .-

(1) **** *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties ;

4. A perusal of the order dated 30.10.2017 would show that the court has invoked the power u/s 23(2) of the Act of 1955 which provides that before proceeding to grant any relief in this Act, it shall be the duty of the court in the first instance in every case where it is possible to find reconciliation between the parties. The order dated 30.10.2017 records that if the respondent does not turn up despite service of notice it would be deemed that she is not interested for reconciliation and in such eventuality, the case would be decided according to the merits. The said power is vested u/s 23(2) of the Act, 1955. The assumption of the petitioner that if the petitioner turns up and files an application for setting aside exparte order then in such a case, the court will decide the application for setting aside the exparte order on its own merit for which no presumption can be drawn at this stage. In view of the fact recorded in the order dated 30.10.2017 the court has invoked the power u/s 23(2) of the Act, 1955 to reconcile the issue. I do not find any illegality or jurisdictional error in the impugned order warranting interference by this Court.

5. Accordingly, this petition is disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**