

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 32 of 2018

- Khilendra, son of Heeraram Sahu, aged about 30 years, resident of Rajim, Police Station & Tahsil - Rajim, District - Gariyaband (C.G.)

---- Appellant

Versus

- Smt. Purnima, aged about 28 years, wife of Khilendra Sahu, resident of Village - Torla, Police Station - Gobra Nawapara, Tahsil - Abhanpur, District - Raipur (C.G.)

---- Respondent

For Appellant : Shri D. N. Prajapati and
Ms. Rabiya Khan, Advocates
For Respondent : Shri Dashrath Kushwaha, Advocate

SB : Hon'ble Shri Justice Sharad Kumar Gupta

18.04.2018

- 1) Challenge in this appeal is levied to the order dated 21.11.2017 of the Additional District Judge, Gariyaband, District Gariyaband in Civil Suit No.04-A/2016, whereby and whereunder he dismissed the Appellant's application filed under Section 26 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955').
- 2) The Appellant has filed an application under Section 13 of the Act, 1955 for dissolution of the marriage solemnized between him and the Respondent in accordance to Hindu Marriage Act on the ground of cruelty, inter-alia the Appellant filed an application under Section 26 of the Act, 1955 to obtain the custody of minor male child, Parveen, whose date of birth is 02.03.2010. Trial Court rejected the aforesaid application. Being aggrieved, the Appellant preferred this appeal.

- 3) As per provisions of Section 28(2) of the Act, 1955, an interim order passed under Section 25 or Section 26 of the Act, 1955 is not appealable.
- 4) In **Annapurna Dei vs. Nabakishore Singh; AIR 1965 Orissa 72** and in **Harulal Dasgupta vs. Smt. Saudamini Misra; AIR 1985 Orissa 239**, the learned Single Judge of the Orissa High Court has held that interim order passed under Section 26 of the Act, 1955 is not appealable.
- 5) In the case in hand, the impugned order is an interim order and not the final order. Matter is still pending consideration before the trial Court.
- 6) Looking to the aforesaid facts and circumstances and judicial precedents laid down by the learned Single Judge of the Orissa High Court, this Court finds that this appeal is not maintainable because the impugned order is an interim order and not the final order.
- 7) At this stage, the learned counsel for the Appellant prayed that the appeal may be dismissed as withdrawn with liberty to file appropriate petition before competent jurisdictional forum seeking the relief.
- 8) Accordingly, the appeal is dismissed as withdrawn with liberty as prayed for.

- 9) Certified copy of the impugned order filed along with the appeal should be returned back to the Appellant after retaining the photocopy of the same.
- 10) Certified copy today itself.

Sd/-
(Sharad Kumar Gupta)
JUDGE

chandra