

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (227) No. 771 of 2018**

1. Nimish S. Agrawal, S/o Sunil Agrawal, aged about 37 years, R/o 1/45, Motilal Nehru Nagar (East) Bhilai, Tahsil and District Durg (C.G.)

---- Petitioner/ Plaintiff**Versus**

1. Ruhi Agrawal, W/o Nimish Agrawal, D/o Vijay Agrawal, aged about 33 years, R/o Deepak Nagar, Road No. 3, Durg, Tahsil and District Durg (C.G.)
2. Ku. Nirvana Nimish Rai, D/o Nimish Agrawal, aged about 6½ years, Minor through her natural guardian, Ruhi Agrawal, W/o Nimish Agrawal, D/o Vijay Agrawal, aged about 33 years, R/o Deepak Nagar, Road No. 3, Durg, Tahsil and District Durg (C.G.)

---- Respondents / Defendants

For Petitioner : Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****07/09/18**

1. Learned counsel for the petitioner submits that the application filed by the petitioner / plaintiff under Section 25 of the Guardians and Wards Act, 1890 before the Family Court, Durg for custody of his son is pending consideration since 05.12.2016 and there is no substantial progress in the trial and even the issues have not been framed till date and further submits pendancy for such a long time runs contrary to the principles of law laid down by the Supreme Court in the case of **Bhuwan Mohan Singh v. Meena and Others**¹.

2. I have heard learned counsel for the petitioner / plaintiff.

3. True it is that the matter is pending consideration since 05.12.2016 and the Supreme Court in the case of *Bhuwan Mohan Singh* (supra) has

¹ (2015) 6 SCC 353

held in paragraph 12 & 13 as under :-

“12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus :

“10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in , and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.”

13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and Reasons of the Act and the spirit of the provisions under [Section 125](#) of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory

tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.”

4. It is a matter of concern that despite the mandate of the Supreme Court in the case of *K.A. Abdul Jaleel* (supra) and also in *Bhuwan Mohan Singh* (supra), the Family Court, Durg has not taken note of it and has not taken steps to decide the dispute with regard to the custody of the child expeditiously. The Family Court cannot go on adjourning the case by granting repeated adjournments but should have taken steps to expedite the hearing of the suit pending since 5.12.2016 keeping in view that the father has claimed the custody of his son.

5. Be that as it may, the Family Court, Durg is directed to conclude the trial expeditiously, preferably within a period of three months from the date of receipt of copy of this order on its own merit and in accordance with law.

6. Needless to say that all the Family Courts should also dispose of the family disputes as directed by the Supreme Court in the case of *K.A. Abdul Jaleel* (supra) and *Bhuwan Mohan Singh* (supra) expeditiously and to ensure that these disputes are finalized quickly without unnecessary adjournments.

7. The Additional Registrar (Judicial) is directed to send a copy of this order to the Family Courts of the State for expeditious disposal of the family / matrimonial disputes expeditiously in light of the mandate issued by the Hon'ble Supreme Court in above stated judgments. AR(J) is further directed

to call for the report from each of the family Courts about the family / matrimonial disputes pending for more than a year and place it for consideration by separately registering MCC on 08.10.2018.

Certified copy, as per rules.

Sd/-

(Sanjay K. Agrawal)
Judge