

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 17 of 2019**

- Priyanka Yadav W/o Shri Hemant Kumar Yadav Aged About 25 Years R/o Village - Sajapani, P.S. And Tehsil - Sitapur, District Sarguja Chhattisgarh

---- Appellant**Versus**

- Hemant Kumar Yadav S/o Durga Mohan Yadav Aged About 29 Years Occupation - Service (Assistant Teacher Lb), R/o Village - Pakargoan, P.S. And Tehsil - Pathalgaon, District Jashpur Chhattisgarh

---- Respondent

For Appellant : Shri Surfaraj Khan, Advocate

For Respondent : Shri Rishi Rahul Soni, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board**08/07/2019**

This appeal arises out of order dated 17/12/2018 passed by the Family Court whereby the Family Court, while proceeding to draw conciliation proceedings under Section 9 of the Family Courts Act, 1984 has rejected the applications for urgent hearing as also an application filed by the appellant / mother for grant of custody of the child.

2. Learned counsel for the appellant would argue that after the husband moved an application under Section 7 of the Guardians and Wards Act, 1890, the Family Court proceeded to draw conciliation proceedings. However, at this stage, when other applications were to be kept pending, without assigning any reason

whatsoever and without application of mind, application for grant of custody of the child has been rejected.

3. Learned counsel for the respondent would submit that the appellant's application for grant of custody of the child is not maintainable in the proceedings instituted by the husband seeking declaration for his appointment as guardian and it is only an attempt to seek custody of the child without there being any properly constituted proceedings instituted in accordance with law.

4. Having heard submission of learned counsel for the parties, we have gone through the impugned order dated 17/12/2018. We find that after the respondent / husband moved an application under Section 7 of the Guardians and Wards Act, the case has not even been registered and the Court issued notices so that before proceeding further in the matter, an attempt may be made to re-conciliate the dispute between the parties under the spirit of Section 9 of the Family Courts Act. What we see from the order dated 17/12/2018 that the learned Family Court has not decided anything and has recorded that before registering the case, it would be proper to first draw proceedings of reconciliation as mandated under Section 9 of the Family Courts Act. In the same breath, without considering the merits of various applications, learned Family Court has rejected all the applications.

5. In our considered view, once the Family Court proceeded to draw reconciliation proceedings under Section 9 of the Family Courts Act, it ought to have kept at bay, all the disputed issues between the parties including various applications filed by the parties before it. An occasion for rejecting various applications would arise only when reconciliation fails. Therefore, in our view, learned Family Court was not at all justified in rejecting the applications mechanically.

6. In the result, the impugned order dated 17/12/2018, to the extent it rejects the applications filed by the appellant before the Family Court, is set aside. We have not commented upon the merits of the case. In the event, reconciliation proceedings fail, an occasion will arise for the Family Court to decide various applications filed by respective parties including appellant's application for grant of custody of the child after hearing both the parties in accordance with law. Learned Family Court is directed to expeditiously conclude the proceedings without unnecessary delay. Records of the Court below be sent back forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge