

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 73 of 2019

Pramod Narad, S/o. Shri Saraswati Narad, Aged About 53 Years, R/o/. Beside of old D.F.O. Bungalow, Parasiya Road, Chhindwada, Tahsil and District Chhindwada Madhya Pradesh.

---- Petitioner

Versus

Smt. Nisha Narad, W/o. Pramod Narad, Aged About 42 Years, Occupation- House Wife, Present Residence- HIG- 2/302 Borasi Colony Durg, Tahsil and District Durg Chhattisgarh.

-----Respondent

For Petitioner	: Mr. Arvind Shrivastava, Advocate
For Respondent	: Mr. B.P. Singh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/12/2019

1. Challenge in this petition is to the order dated 25.10.2018, passed by the Third Additional Principal Judge, Family Court, Durg in Civil Suit No.715/2017, by which the application filed by the petitioner under Section 10 of C.P.C. was rejected.
2. It is submitted by the counsel for the petitioner that the petitioner has filed a divorce petition under Section 13 of the Hindu Marriage Act, before the Court of Principal Judge, Family Court, Chhindwara (M.P.), which was registered as Civil Suit No.215/2017. In the meanwhile, the respondent has filed a petition under Section 9 of Hindu Marriage Act before the Principal Judge, Family Court, Durg on 13.11.2017.
3. The issue raised and the allegation made in both the cases are similar, therefore, to avoid conflicting decision, it was prayed that subsequent proceeding under Section 9 of Hindu Marriage Act be stayed by the

petitioner. The learned Family Court, Durg has rejected this application by impugned order.

4. It is further submitted by the counsel for the petitioner that the grounds raised in both the petition are similar. In divorce petition, the applicant has taken ground of cruelty of his wife, whereas in the petition filed under Section 9 of Hindu Marriage Act by the respondent, she has pleaded cruelty by the petitioner, husband and his family members. Therefore, the decision in any of the proceeding would have binding effect upon other proceeding. Relying on the judgment of **Balwant Singh, S/o. Gopalaram Jat Vs. Lakwinder Kaur W/o. Gurulal Singh Sinkh & another**, reported in **2018 (3) M.P.L.J. 553**, it is submitted that the matter in issue in both the cases is directly and substantially same between the parties and the parties are also litigating under the same title although the nature of the relief claimed is different but to avoid the conflicting decision, the proceeding in one of the case should be stayed. Reference has also been made to the judgment of Supreme Court in case of **Aspi Jal & Another Vs. Khushroo Rustom Dadyburjor**, reported in **(2013) 4 SCC 333**. The petitioner has also relied on the judgment of Supreme Court in **National Institute of Mental Health & Neuro Sciences Vs. Parmeshwara**, reported in **AIR 2005 SC 242**.
5. Counsel appearing on behalf of the respondent submits that divorce petition and the petition filed by the respondent for restitution of conjugal rights are totally different case. Although the parties are same but the relief claimed is different. The learned Family Court has not committed any error in passing the impugned order.

6. I have heard the learned counsel for both the parties and perused the documents placed on record.
7. The issue raised by the petitioner in his divorce petition is cruelty by his wife, the respondent and issue raised by the respondent in this case is similar and other various reasons that are mentioned in the application. The pleadings in divorce petition and the pleading in the petition under Section 9 of Hindu Marriage Act are in direct conflict with which other.
8. Considered on the submissions made from both the sides. Section 10 of the Code of Civil Procedure provides that when the parties are common and pursuing more than one litigation and the matter in issue is directly and substantially the same, then decision of such issue in one of the proceeding would act as *res judicata* in subsequent proceeding. It appears to be not denied that the proceeding under Section 9 of Hindu Marriage Act is subsequent suit and parties in both the cases are same. The issue raised in both the cases are directly and substantially similar. Therefore, according to the provision under Section 10 of C.P.C., the situation exists in which the subsequent proceeding or suit can be stayed. Although the cases are not for the relief similar in nature, therefore, there is absence of exact requirement under Section 10 of C.P.C. but for the reason that the decision in any previous suit will have a direct bearing on the subsequent suit or proceeding, therefore, there is necessity that the subsequent proceeding should be stayed. Hence, under these circumstances, the Courts have option exercising jurisdiction under Section 151 of C.P.C., in which the subsequent proceeding could have stayed. Hence, I am of this opinion that the impugned order dated 25.10.2018 has not been

correctly passed, which is liable to be set-aside.

9. Hence, on the basis of the discussion made herein above, this petition is allowed and disposed off at motion stage. The impugned order dated 25.10.2018 is set-aside and it is ordered that the proceeding in Case No.715/2017, pending before the 3rd Additional Principal Judge, Family Court, Durg (C.G.) shall remain stayed, till the disposal of Civil Suit No.215 of 2017, pending before the Court of Principal Judge, Family Court, Chhindwara (M.P.).

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram