

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 56 of 2019

- Ghanshyam Gupta, S/o Late Shri Govind Prasad Gupta, aged about 32 years, Caste Halwai, R/o Jai Stambha Chowk, Kunkuri, Police Station Kunkuri, District Jashpur (CG)

---- Appellant

Versus

- Smt. Tanu Gupta, W/o Ghanshyam Gupta, aged about 23 years, Catse Halwai, R/o Toto, Sai Nagar, Post Toto, P.S. and District Gumla (Jharkhand)

---- Respondent

For the Appellant	:-	Mr. Dilman Rati Minj, Advocate
For the Respondent	:-	Mr. M.K. Sinha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Hon'ble Shri Justice Manindra Mohan Shrivastava J.

30.07.2019

The parties are before us and with their consent the matter is being decided finally.

2. This appeal is directed against the order dated 16.01.2019 by which the appellant's application seeking restitution of conjugal rights has been rejected by the learned Family Court.

3. Learned counsel for the appellant made a short and pointed submission of law that the Family Court could not have rejected his application without any trial. He would argue that at the initial stage of conciliation proceedings, if the Family Court found that, at that stage, conciliation was not possible, it ought to have proceeded to try the suit by directing the respondent to file written statement, framing issues and allowing the parties to lead oral and documentary

evidence to decide the application on its own merits. However, the learned Family Court after recording failure of conciliation, has straightway proceeded to dismiss the application without any trial whatsoever.

4. On the other hand learned counsel for the respondent would argue that the learned Family Court with the assistance of the counselor made an effort to bring about conciliation between the parties and in that process, the Court was satisfied that it was not possible to pass an order of restitution of conjugal rights because of the nature of dispute between the parties and, therefore, the order had to be passed.

5. After hearing learned counsel for the parties we are of the view that the learned Family Court has committed patent illegality in rejecting the appellant's application for restitution of conjugal rights without any trial whatsoever.

6. No doubt, the scheme of the Family Courts Act, 1984 obliges the Court to make efforts for settlement as mandated under Section 9 of the said Act, in case, at the initial stage, the conciliation does not seem to be possible, the Court is then required to assume its adjudicatory role and decide the application in accordance with law. The learned Family Court completely oblivious of this legal requirement and its functions seems to have closed the proceedings on erroneous assumption that once conciliation fails, the application for restitution of conjugal rights cannot be granted. This is not the correct approach in law even if the efforts to bring about settlement

at the initial stage of the proceedings do not bear fruit. The Courts cannot abdicate its judicial functions to adjudicate upon the application by holding trial. We find that in the present case, the learned Family Court had drawn conciliation proceedings even without there being any reply filed by the respondent. Though in view of settled legal position, it was not mandatory to get the reply filed before drawing conciliation proceedings, even then, after failure of conciliation proceedings, the Court below had no option but to proceed to adjudicate on the merits of the case by calling upon the respondent to file its written statement, framing issues and allowing the parties to lead oral and documentary evidence.

7. For that sole reason the impugned order cannot be sustained in law and is, therefore, set aside. The matter is remanded to the Family Court for proceeding in accordance with law by directing the respondent to file written statement, framing issues and then adjudicate upon the issues after allowing the parties to lead oral and documentary evidence. Before parting with the case we must hasten to observe that the efforts for settlement can be re-initiated at any stage of the proceedings as when the Family Courts finds it appropriate.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge