

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No.423 of 2019

(Arising out of order dated 03.07.2019 passed by learned Single Judge
in WP227- 527 of 2019)

Reshma Sahu S/o Shri Rom Lal Sahu Aged About 21 Years R/o Village-
Amsena Thana- Aarang District- Raipur Chhattisgarh.

---- Appellant

Versus

Brijesh Kumar Baghel S/o Shri Raj Kumar Baghel Aged About 23 Years
R/o Ward No. 06 Village- Amsena Thana-Aarang District -Raipur
Chhattisgarh.

-----Respondents

For Appellant : Shri Rakesh Dubey, Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon, CJ

20.09.2019

1. This appeal has been preferred challenging the correctness and sustainability of the Annexure P/1 verdict passed by the learned Single Judge under Article 227 of the Constitution of India, as noted in paragraph No.1 of the judgment, which is reproduced below :

“1. The respondent herein filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights before the family Court, in which petitioner herein filed primary objection and challenged the maintainability of the said application. Learned 2nd Additional Principal Judge, Family Court, Raipur rejected petitioner's objection vide order dated 15/05/2019 passed in case No.146/2018 against which this writ petition under Section 227 of the Constitution of India has been preferred by the petitioner.”

2. If the petition was considered under Article 227 of the Constitution of India (wrongly typed as 'Section 227' in the order impugned), no appeal is maintainable by virtue of the proviso to Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. When the question was put to the learned counsel, it is stated that the proceeding was actually under Article 226 & 227 of the Constitution of India.
3. We are not impressed with the said submission. Since the matter was stated as considered and finalized by the learned Single Judge under Article 227, appeal is not maintainable by virtue of the proviso to Section 2 of the above Act. On the other hand, if there is any mistake in the noting/observation made by the learned Single Judge, it had to be brought to the notice of the Hon'ble Judge who considered the matter at the first instance. No pleading to any extent will tilt the balance in view of the law declared by the Hon'ble Supreme Court in **State of Maharashtra v. Ramdas Srinivas Nayak** reported in **(1982) 2 SCC 463**.
4. The learned counsel for the appellant seeks for permission to withdraw the appeal, without prejudice to the rights and liberties of the appellant to move the learned Single Judge by way of appropriate proceedings.
5. Permission is granted.
6. The appeal is dismissed as withdrawn.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge