

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 4 of 2019

Ajay Agrawal, S/o. Ram Prasad Agrawal, Aged About 30 Years, R/o. Burgahan Road, Baloda, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

Saroj Agrawal, W/o. Ajay Agrawal, Aged About 28 Years, R/o. Keshav Cycle Store Naila, Ward No. 4, Near Juna Talab, Masjid Gali, Naila, Tahsil Janjgir, District- Janjgir-Champa, Chhattisgarh

-----Respondent

For Petitioner	: Mr. Manoj Paranjpe, Advocate
For Respondent	: Mr. Rajesh Jain, 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 27.10.2018, passed by the Judge, Family Court, Janjgir in Civil Suit No.48-A/ 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 on 15.01.2016. The petition has been although dismissed but the appeal presented is pending, before the High Court. Therefore, it was prayed that during the pendency of the first appeal in divorce petition, the present proceeding under Section 9 of the Hindu Marriage Act filed by the respondent on 02.03.2017 be stayed. Application was contested by the respondent and then by the impugned order, the application has been rejected.

3. 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 desertion of his wife and whereas in the petition filed under Section 9 of Hindu Marriage Act by the respondent, she has pleaded desertion by the petitioner. 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**.
4. 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.
5. I have heard the learned counsel for both the parties and perused the documents placed on record.
6. The issue raised by the petitioner in his divorce petition is desertion of his wife, the respondent and the issue raised by the respondent in this

case is similar that respondent has denied to admit the respondent in cohabitation for 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. Divorce petition has been decided and dismissed, therefore, there is a finding at present against the petitioner, which has been challenged before the High Court. The appeal is considered as continuation of civil suit, therefore, the finding given by the Family Court can not be said to have become final.

7. On perusal of the copy of the order sheets filed in this petition, it is noted that the learned Family Court has passed order dated 17.07.2017 by which the application filed by the petitioner under Section 10 of C.P.C. was allowed and the proceeding was stayed till the pendency of divorce petition, but the same Court has passed order differently at the time of pendency of appeal .
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 as the petitioner is claiming that respondent has deserted her and respondent is claiming that petitioner has denied cohabitation with her. Therefore, according to the provisions 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 the 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 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 27.10.2018 is set-aside and it is ordered that the proceeding in Civil Suit No.48-A/2017, pending before the Judge, Family Court, Janjgir shall remain stayed till disposal of F.A.(M) No.180 of 2018, pending before this High Court.

Sd/-
(Rajendra Chandra Singh Samant)
Judge