

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 118 of 2019

Rohit Singh S/o Shri Narendra Singh Aged About 34 Years R/o 57
C/12 M/1, Harwara, Dhumanjganj, Allahabad, Uttar Pradesh.,
District : Allahabad, Uttar Pradesh

---- Appellant

Versus

Smt. Komal Singh D/o Shri Devendrapal Singh Aged About 29
Years R/o Dharampura, Ashoka Lifestyle, House No.2, Jagdalpur,
District Bastar Chhattisgarh. District Bastar(Jagdalpur),
Chhattisgarh

---- Respondent

For the Appellant :- Mr. Sudeep Johari, Advocate

For the Respondent :- Mr. Utsav Mahiswar, Advocate

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

Order on Board By
Manindra Mohan Shrivastava, J.

24.02.2020

Heard.

1. We find that present is an appeal under Section 19 of the Family Court Act against the order dated 15.10.2018 passed by First Additional Principal Judge, Family Court Raipur in case No. 681/2017, by which the Family Court has dismissed the appellant's application under Section 11 for annulment of marriage in default of appearance.

2. Though learned counsel for the appellant submits that he was required to file an appeal because by impugned order, learned Court below has made its own observation and findings on merit of the case, after going through the order, we are not inclined to accept the submission. There are certain observations made in the impugned order dated 15.10.2018 but they cannot not be considered to be finding on any of the issues raised by the appellant, obviously because, no trial was done in the case. The order is, in law, dismissing the application in default. Against, this the appellant has remedy to move appropriate application for setting aside the dismissal of the suit for want of prosecution, invoking provisions under Order 9 Rule 9 CPC.

3. Learned counsel for the respondent submits that, in case, the appellant intends to take remedy under Order 9 Rule 9 CPC, he would not have any objection, however, it should not be treated as any concession on any of the issue raised in the application nor should it be taken as concession to any application for setting aside order of dismissal of suit for default, which may be filed by the appellant before the Court below.

4. Having considered the submissions of learned counsel for the parties, we are inclined to allow the appellant to withdraw this appeal with liberty to move application under Order 9 Rule 9 CPC. We further make it clear that we have not commented anything upon merit of the case. Further, none of the observation made on the aspect of merits of the application under Section 11 of the Hindu Marriage Act shall be treated as decision on the merits of

the issue between the parties. Further, it will be open for the respondent to raise such objection as may be available to him under the law, in the event, the appellant move application under order 9 Rule 9 CPC. With liberty as prayed, the appeal is dismissed.

5. Accordingly the appeal is dismissed as withdrawn with liberty.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge