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SISTA SOMAYAJULU
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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 155 of 2024

{Arising out of judgment and decree dated 1-4-2024 in Civil Suit No.300A/2021 of the Judge, Family Court, Ambikapur, District Surguja}

Judgment reserved on: 13-10-2026

Judgment delivered on: 28-10-2026

Judgment (Full) uploaded on: 28-10-2026

Siddharath Yadav, S/o Krishnakant Yadav, Aged about 37 years, R/o Ward No.15, Power House Road, Ramanujganj, PS/Tehsil/PO Ramanujganj, District Balrampur Ramanujganj, Present Address Near Shiv Temple, Gandhinagar, Ambikapur, District Sarguja, Chhattisgarh.

(Plaintiff)

... Appellant

versus

Smt. Madhu Yadav, W/o Siddharath Yadav, aged about 35 years, D/o Mahendranath Singh, R/o Village Jamlapur, Near Baba Ganga Das Ashram, PO Dhelwa, PS/District Gajipur, Uttar Pradesh.

(Defendant)

... Respondent

For Appellant	**:**	Mr. H.S. Ahluwalia, Advocate.
For Respondent	**:**	Mr. Lukesh Kumar Mishra, Advocate.

Division Bench: -
Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

C.A.V. Judgment

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the **appellant herein/plaintiff husband** has preferred this appeal challenging the judgment & decree dated **1-4-2024** passed by the Judge, Family Court, Ambikapur, District Surguja in **Civil Suit No.300A/2021** (**Siddharth Yadav v. Smt. Madhu Yadav**), by which the application filed by the **appellant herein/plaintiff husband** under Section 9 of the Hindu Marriage Act, 1955, for grant of decree for restitution of conjugal rights against the respondent herein/defendant wife, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Factual Matrix

Admitted Facts: -

3. It is admitted fact on record that marriage between **appellant herein/ plaintiff husband Siddharth Yadav** and **respondent herein/ defendant wife Madhu Yadav** was performed according to the Hindu rites and customs on **7-5-2017** at Village Jamalpur, District Gajipur (U.P.) and from their wedlock, a daughter was born on 9-9-

2019, who is presently residing with **respondent herein/defendant wife Madhu Yadav**.

-:Case of the Appellant herein/Plaintiff Husband before the Family Court:-

4. The case of the appellant herein/plaintiff husband, as set out in the plaint, is that the respondent herein/defendant wife is stated to be residing with her parental family at the time of institution of the suit. According to the plaintiff, at the time of marriage, neither the plaintiff nor his family members demanded any dowry or other articles from the defendant's family, as the plaintiff husband was employed in Government service and the financial condition of his family was satisfactory. Before the marriage, certain customary rituals were required to be performed at the groom's family residence. It is further stated that for the purpose of meeting the expenses of such ceremonies, the defendant's family forcibly deposited approximately ₹ 2,00,000/- into the bank account of the plaintiff's father and the said amount was subsequently utilised for purchasing jewellery for the bride.

5. The plaintiff further pleaded that about one year after the marriage, the defendant's behavior towards him and his family members changed, and she began picking quarrels over trivial matters, disturbing the peace and harmony of the matrimonial home. She frequently threatened to leave the matrimonial home and return to her parental house, neglecting her matrimonial responsibilities. The plaintiff further stated that the defendant was fond of Bhojpuri songs, films and fashion, and that he and his family made efforts to fulfill her wishes, including

arranging her participation in Bhojpuri channel programmes at Patna on four or five occasions. However, the defendant continued to remain dissatisfied, and her conduct gradually became a source of discord in the matrimonial relationship. The plaintiff further pleaded that the defendant frequently quarrelled over minor issues and sometimes refused to prepare food. During her pregnancy, she insisted on visiting her parental home and was accordingly permitted to do so in July, 2019. A daughter was born to them on 9-9-2019 at Surya Hospital, Banaras.

6. The plaintiff further stated that, despite requesting the defendant's father and brother to bear the childbirth expenses, he had to pay approximately ₹ 1,00,000/-. He also stated that, due to inadequate care at her parental home, the health of the defendant and the daughter deteriorated, whereupon he brought them to his house. However, after the daughter's Annaprashan ceremony on 28-2-2020, the defendant, on 1-3-2020, called her brother and left for her parental home with the daughter without his consent and since then, she had been residing there. The plaintiff claimed that he and his family members made repeated efforts to persuade the defendant to return to the matrimonial home and that he continued to bear the expenses of the defendant and the daughter, but all efforts to restore matrimonial harmony proved unsuccessful. Accordingly, he instituted proceedings seeking restitution of conjugal rights against the defendant.

-:Written Statement of the Respondent herein/Defendant Wife before the Family Court:-

7. It is noteworthy that despite due service of summons, the respondent herein/defendant wife remained absent on 12-6-2023 before the Family Court. Consequently, the learned Family Court proceeded *ex parte* against her. Therefore, no written statement was filed on her behalf.

8. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

क्र.	**विचारणीय प्रश्न**	निष्कर्ष
1.	क्या प्रतिवादिनी बिना किसी कारण से वादी से अलग रह रही है?	''प्रमाणित नहीं''
2.	क्या वादी दाम्पत्य संबंधों की पुनर्स्थापना की आज्ञप्ती प्राप्त करने का अधिकारी है?	''प्रमाणित नहीं''
3.	सहायता एवं वाद व्यय?	''कंडिका क्र.27 के अनुसार''

9. Parties were given opportunity to adduce evidence and after completion of trial, the suit of the appellant herein/plaintiff husband has been dismissed vide **judgment dated 1-4-2024**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) The impugned judgment and decree passed by the Family Court being illegal, erroneous and contrary to law, are liable to be set-aside.

(ii) The learned Family Court while passing the impugned judgment and decree has failed to appreciate the evidence available on record in its correct perspective.

(iii) The learned Family Court has committed error in not appreciating the fact that without any valid reason the respondent wife left her matrimonial house.

(iv) The learned Family Court has failed to appreciate that the appellant has specifically pleaded and has adduced the evidence to the effect about the behaviour of the respondent herein/defendant wife.

(v) The learned Family Court has failed to appreciate the evidence and pleadings made by the appellant in his plaint which remain unrebuttal by the respondent.

(vi) The learned Family Court has committed illegality in rejecting the restitution of conjugal rights only on the ground that there is no documentary evidence except the oral evidence of the witnesses.

(vii) The learned Family Court has committed error in taking into consideration the statement of the respondent recorded under Section 161 of the CrPC during investigation for the offence registered under Section 498A of the IPC on 13-8-2021 against the appellant.

(viii) No evidence has been adduced by the respondent to reject the contentions made by the appellant, on the contrary, the learned Family Court had taken into consideration the contents of the FIR and the statement of the respondent recorded under Section 161 of the CrPC to conclude that there was valid reason for the respondent

to leave the matrimonial house therefore the appellant is not entitled for decree of restitution of his conjugal rights.

(ix) The learned Family Court has committed error in coming to the conclusion that the allegation made by the respondent in the FIR has not been rebutted by the appellant in his plaint therefore those allegations are deemed to be truth.

(x) The written statement and the evidence of the appellant itself show that the behaviour of wife was cruel towards the husband and the respondent has withdrawn from their society without any reasonable justification.

(xi) The learned Family Court has committed error in not considering the provision aims of Section 9 of the Hindu Marriage Act which is to encourage reconciliation and the resumption of marital cohabitation.

-:Arguments of the Appellant herein/Plaintiff Husband:-

10. Learned counsel for the **appellant herein/plaintiff husband, Siddarth Yadav**, submitted that the evidence adduced on behalf of the appellant before the Family Court remained unchallenged and uncontroverted. Despite this, the Family Court, without properly appreciating the said evidence, relied upon certain documents which had not been produced by the appellant/plaintiff husband and proceeded to decide the matter on the basis of such material. It was, therefore, contended that the Family Court had ignored the uncontroverted evidence on record and rendered the impugned

judgment on the basis of material not duly brought on record, resulting in an erroneous decision that is unsustainable in law.

-:Arguments of the Respondent herein/Defendant Wife:-

11. Learned counsel for the **respondent herein/defendant wife, Madhu Yadav,** submitted that the Family Court had rightly decided the matter after due appreciation of the evidence and material available on record. It was contended that the findings recorded by the Family Court are justified and that no ground for interference with the impugned judgment is made out.

-:Details of evidence before the Family Court:-

12. Before the Family Court, witnesses on behalf of the appellant herein/ plaintiff husband have been examined as Siddharth Yadav (**PW-1**) – the plaintiff himself and his father Krishnakant Yadav (**PW-2**). However, no witness has been examined on behalf of the respondent herein/ defendant wife, as she was ex parte before the Family Court.

-:Analysis of the Appellate Court:-

13. At the outset, it would be appropriate to examine the objection raised by learned counsel for the **appellant herein/plaintiff husband, Siddharth Yadav**, that the Family Court, on its own, exhibited documents that had not been produced by the appellant. In this regard, it is pertinent to note that, under Order XVIII Rule 4 of the Code of Civil Procedure, 1908, the examination-in-chief of a witness is ordinarily recorded by way of affidavit. However, the witness is required to appear before the Court for cross-examination, and the documents sought to be

relied upon must be duly tendered and exhibited by the party concerned.

14. In the present case, the plaintiff's signatures appearing on the deposition indicate that he appeared before the Family Court on 6-3-2024 and duly tendered the documents produced by him in evidence, which were thereafter exhibited in accordance with law. Thus, the objection raised by learned counsel for the appellant that the Family Court exhibited the documents on its own, is devoid of merit.

15. The list of documents itself makes it evident that **Ex.P-1** to **Ex.P-3** and **Articles 1** to **5** were produced by the appellant himself. Since the appellant had produced these documents and tendered them in evidence, they are required to be read as they stand, in accordance with law. Therefore, the Family Court committed no procedural irregularity in this regard.

16. As regards the further contention of learned counsel for the appellant that the evidence of the appellant remained uncontroverted and, therefore, ought to have been accepted by the Family Court, it is well settled that mere absence of cross-examination does not automatically establish a party's case. The Court must assess the evidence as a whole and determine whether it is reliable and sufficient to establish the essential ingredients of the relief claimed. Therefore, the entitlement of the appellant to the relief sought cannot be determined merely on the ground that his evidence remained unchallenged; the same must be

assessed in the light of the applicable statutory provisions and the evidence available on record.

17. Since the relief sought is restitution of conjugal rights, it would be appropriate to refer to the relevant statutory provision i.e. Section 9 of the Hindu Marriage Act, 1955, which deals with restitution of conjugal rights and which reads as follows: -

> "**9. Restitution of conjugal rights.—**When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.
>
> *Explanation*.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society."

18. The said provision stipulates that where either spouse has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may seek restitution of conjugal rights by filing a petition before the competent court. The Court, upon being satisfied of the truth of the statements made in the petition and that there is no legal ground for refusing the relief, may pass a decree for restitution of conjugal rights.

19. The Explanation to Section 9 further provides that the burden of proving a reasonable excuse for withdrawing from the society of the other spouse lies upon the spouse who has so withdrawn. However, the initial burden of establishing the grounds for seeking restitution of

conjugal rights rests upon the spouse claiming such relief. Accordingly, the mere fact that the evidence adduced by the appellant has remained uncontroverted does not, by itself, entitle him to a decree. The Court must still be satisfied that the statutory requirements of **Section 9 of the Hindu Marriage Act, 1955**, stand fulfilled on the basis of the evidence available on record.

20. Upon examination of the record, it emerges that, although the respondent/defendant wife was proceeded ex parte, the document **Ex.P-2** produced by the appellant himself indicate that she had been living separately on account of the alleged harassment. The Family Court, after considering the material available on record, has assigned cogent reasons for concluding that the petition for restitution of conjugal rights was instituted to avoid the criminal proceedings arising out of the FIR and the liability to pay maintenance. The Family Court has further observed that, had the petitioner genuinely intended to resume cohabitation with his wife, he would have made sincere efforts to bring her back to the matrimonial home rather than instituting the present proceedings after a delay of approximately one year and nine months. The findings of the Family Court, therefore, are based on an appreciation of the material available on record and cannot be faulted merely on the ground that the respondent/defendant wife was proceeded ex parte.

21. The Family Court has assigned cogent and well-reasoned grounds for not accepting the appellant's uncontroverted testimony. It has rightly

observed that, in proceedings seeking restitution of conjugal rights, merely making allegations and counter-allegations is not sufficient; rather, the appellant/plaintiff husband is required to establish that the respondent/defendant wife has withdrawn from his society without reasonable excuse and is living separately without any justifiable cause. The appellant/plaintiff's testimony, therefore, could not have been accepted merely because it remained unchallenged, particularly when the material available on record did not establish the necessary statutory requirements for granting a decree under Section 9 of the Hindu Marriage Act, 1955.

22. In view of the foregoing discussion, no interference with the findings recorded by the Family Court is warranted. It is pertinent to observe that, if the allegations made against the appellant/plaintiff husband in the FIR and the consequential criminal proceedings are ultimately found to be false, the appellant has appropriate remedies available to him in accordance with law. However, having regard to the allegations contained in the FIR and the material available on record, the respondent/defendant wife cannot be compelled to reside with the appellant merely on the basis of his uncontroverted testimony. As the appellant failed to prove his entitlement to the relief claimed, the Family Court committed no error in dismissing the petition. Accordingly, no ground for interference with the impugned judgment and decree is made out.

-:Final Conclusion:-

23. In view of the foregoing discussion, this Court finds no error in the findings recorded by the learned Family Court regarding the appellant/ plaintiff's failure to establish his entitlement to a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. Accordingly, the appeal, being devoid of merit, is dismissed, and the impugned judgment and decree are affirmed. In the facts and circumstances of the case, there shall be no order as to costs.

24. Let the decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

Sd/-
(Sushma Sawant)
JUDGE

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