CGHC010399442026

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on : 13/10/2026

Order Delivered on : 28/10/2026

WP227 No. 1306 of 2026

SUMIT KUMAR Digitally signed by SUMIT KUMAR Date: 2026.10.28 17:01:31 +0530

Rahul Gupta S/o S/o Pawan Kumar Gupta Aged About 43 Years R/o M - 20, Sector - 1, Avanti Vihar, Raipur - 492001 C.G., Chhattisgarh

... Petitioner(s)

versus

Radhika Gupta Alias Renu Mittal D/o Daughter Of Rajendra Mittal Aged About 43 Years B.W. 08, Vasundhara Kundla City, Behind Agrasen Bhawan, Ambikapur District Surguja - 497001 C.G., Chhattisgarh

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s) : Mr. Rahul Gupta, Petitioner-in-Person

(Hon'ble Shri Justice Ravindra Kumar Agrawal)

CAV Order

1. The present writ petition has been preferred by the petitioner challenging the order dated 11.03.2026 (Annexure P/1) passed by the learned First Additional Principal Judge, Family Court, Raipur (hereinafter referred to as "the Family Court"), in an unregistered case (Rahul Gupta v. Radhika Gupta @ Renu Mittal), whereby the learned Family Court directed the petitioner to value the suit as per the amount

claimed and to pay ad valorem Court Fees. The petitioner prayed for the following reliefs in the writ petition:-

> *"10.1 Exercise supervisory jurisdiction under Article 227 of the Constitution of India, setting aside the impugned interim order dated 11.03.2026 passed by the learned I Additional Principal Judge, Family Court, Raipur in Filing No. DJ ADJ 237/2026;*
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> *10.2 Direct the learned Family Court, Raipur to accept and register the application on the fixed court fee of ₹40/- under Entry 20-A of Schedule II of the Court Fees Act, 1870, and proceed to adjudicate the claim for restitution of funds on merits in accordance with law;*
>
> *10.3 Pending final disposal of the present petition, stay the operation, effect, and implementation of the impugned interim order dated 11.03.2026 passed in Filing No. DJ ADJ 283/2026, and restrain the learned Family Court, Raipur from rejecting the application or passing any adverse or coercive orders against the Petitioner; and*
>
> *10.4 Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

2. Brief facts of the case are that the petitioner is the plaintiff before the learned Family Court, where he has filed a suit under Explanation (c) of Section 7(1), 8 of the Family Courts Act, 1984, Section 151 of the Code of Civil Procedure, 1908 (in Short, "the CPC"), and Section 27 of the Hindu Marriage Act, 1955, for return of the property. The suit was filed by the petitioner on 24.02.2026 before the learned Family Court. The petitioner claimed an amount of Rs. 2,50,13,326/- from the respondent in the suit, with the pleadings that the respondent, during her cross-examination in the proceedings under Section 9 of the Hindu Marriage Act, 1955, before the learned Family Court, admitted that she has no independent source of income, she did not know about the source of the amount deposited in her bank account, therefore, she cannot claimed such amount to be of her self acquired property and also

restricted from showing that the said property is her stree-dhan. The amount of Rs. 2,24,13,316/- is the hard-earned money of the petitioner, which he kept in the bank account of the respondent under the mutual trust between husband and wife. The respondent had lodged a report against the petitioner and his family members, and an FIR under Sections 420, 120-B and 498-A of the IPC; however, even after about 3 years, no charge sheet has been filed in the said FIR; therefore, the petitioner is entitled to recover his money from the respondent. The petitioner filed his suit in the form of an application under Section 27 of the Hindu Marriage Act, 1955 and paid the Court Fees of Rs. 5/-. The learned Family Court, vide its order dated 11.03.2026, directed the petitioner to value the suit according to the amount claimed and to pay the ad valorem court fees. Hence, this petition.

3. Mr. Rahul Gupta, the petitioner in person, would submit that the impugned order passed by the learned Family Court, whereby the petitioner has been directed to pay ad valorem court fees on his claim for recovery of Rs. 2,50,13,326/-, suffers from patent illegality and jurisdictional error. He would submit that the claim arises out of the matrimonial relationship between the petitioner and the respondent, as the aforesaid amount represents the petitioner's self-earned funds accumulated after solemnisation of marriage and entrusted to the respondent during matrimonial cohabitation based on mutual trust and confidence. The respondent was a homemaker having no independent source of income, as admitted by her in the earlier matrimonial proceedings, and the funds were placed in her custody for domestic and family management rather than as a commercial transaction or an

absolute gift. The dispute essentially concerns the property of the parties to a marriage and falls within the exclusive jurisdiction of the Family Court under Section 7(1), Explanation (c), of the Family Courts Act, 1984. He would further submit that the issue of maintainability of an independent application for recovery or restitution of property and funds between spouses stands settled by the Hon'ble Full Bench decision of this Court in **Babulal Yadav v. Sonu Yadav**, FA(MAT) No. 40 of 2022, decided on 04.07.2023, wherein the Court recognised the maintainability of such proceedings before the Family Court under Section 7(1), Explanation (c), of the Family Courts Act, 1984, read with Section 151 of the Code of Civil Procedure, 1908. He would further submit that the learned Family Court was required to examine the substantive nature of the claim and the relief sought rather than treating the proceeding as an ordinary commercial money suit merely because the petitioner had quantified the amount claimed. Reliance is also placed upon the decision of the Supreme Court in **K.A. Abdul Jaleel v. T.A. Shahida**, (2003) 4 SCC 166, to submit that the jurisdiction conferred upon the Family Court in respect of property disputes between parties to a marriage is of wide amplitude and should not be construed narrowly to exclude a claim for restitution of funds allegedly entrusted during matrimonial cohabitation.

4. The petitioner-in-person would next submit that the direction to pay ad valorem court fees is contrary to the binding decision of the Hon'ble Division Bench of this Court in **Devika Joshi v. Deepak Joshi,** FAM No. 61 of 2016, decided on 22.07.2016, wherein, it was held that only a fixed court fee of Rs. 40/- under Entry 20-A of Schedule II of the Court

Fees Act is payable in proceedings of the nature contemplated under Section 7 of the Family Courts Act, 1984. The aforesaid decision has not been overruled by the subsequent Full Bench decision in **Babulal Yadav** (supra), which dealt with the maintainability of an independent application for return of matrimonial property. It is, therefore, argued that the learned Family Court could not have directed the petitioner to pay court fees calculated on the entire amount of Rs. 2,50,13,326/- under the threat of rejection of his claim, particularly when the proceeding is founded upon a matrimonial property dispute and not upon a commercial transaction.

5. Relying upon Section 88 of the Indian Trusts Act, 1882, and the decisions in **Bhim Singh v. Kan Singh**, (1980) 3 SCC 72, **Mangathai Ammal v. Rajeswari,** (2020) 17 SCC 496, **Controller of Estate Duty, Lucknow v. Aloke Mitra**, (1981) 2 SCC 121, and B**alkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam**, 1997 (7) SCC 500, he would submit that the mere deposit of funds in the respondent's account does not establish an absolute gift in her favour. He would further submit that the admissions made by the respondent in the earlier proceedings under Section 9 of the Hindu Marriage Act, 1955, are relevant evidence in support of his claim for restitution of the funds, which is maintainable as a matrimonial property dispute before the Family Court. He would further submit that the direction to pay ad valorem court fees imposes an unreasonable financial burden and impedes his right of access to justice under Articles 14 and 21 of the Constitution of India, as recognised in **Anita Kushwaha v. Pushap Sudan,** (2016) 8 SCC 509. Referring to the judgment dated 15.09.2026

passed in FA(MAT) No. 136 of 2026 (Rahul Gupta v. Radhika Gupta @ Renu Mittal), he would submit that the appeal was dismissed only on the ground of non-maintainability under Section 19(1) of the Family Courts Act, 1984, without adjudicating the merits of the dispute concerning court fees or the jurisdiction of the Family Court under Section 7(1), Explanation (c), of the Act. He would submit that this Court may exercise its supervisory jurisdiction under Article 227 of the Constitution of India to correct the alleged jurisdictional error and set aside the direction requiring payment of ad valorem court fees, thereby permitting the petitioner's claim for recovery of Rs. 2,50,13,326/- with fixed court fees of Rs. 40/- and to proceed in accordance with law.

6. I have heard Mr. Rahul Gupta, petitioner-in-person, and perused the pleadings of the application (Annexure P-2) and the documents annexed with the petition and impugned order.

7. The question which arises for consideration in the present petition is whether the learned Family Court was justified in directing the petitioner to pay ad valorem court fees on an application seeking restitution of Rs. 2,50,13,326/- allegedly entrusted by him to the respondent/wife during the subsistence of their matrimonial relationship. The petitioner contends that the amount represents his self-earned money deposited in the respondent's bank accounts on the basis of mutual trust and confidence and that the respondent, being a homemaker without any independent source of income, holds the said amount in a fiduciary capacity. He has also relied upon the respondent's alleged admissions in the earlier proceedings under Section 9 of the Hindu Marriage Act, 1955, as well as the bank

transactions and income-tax returns, to support that the claim is essentially one relating to matrimonial property and is maintainable before the Family Court under Section 7(1), Explanation (c), of the Family Courts Act, 1984.

8. To examine the controversy, it is necessary to refer to Section 7(1) of the Family Courts Act, 1984, which confers jurisdiction upon the Family Court over suits and proceedings of the nature specified in its Explanation.

> ***"7. Jurisdiction.***—*(1) Subject to the other provisions of this Act, a Family Court shall—*
>
> *(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and*
>
> *(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.*
>
> *Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—*
>
> *(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*
>
> *(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*
>
> *(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*
>
> *(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;*

> *(e) a suit or proceeding for a declaration as to the legitimacy of any person;*
>
> *(f) a suit or proceeding for maintenance;*
>
> *(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor."*

9. Explanation (c) of Section 7(1) of the Family Courts Act, 1984, covers a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. The expression is sufficiently broad to encompass disputes concerning property between spouses; nevertheless, the existence of a matrimonial relationship, by itself, does not convert every monetary claim between spouses into a proceeding concerning their property within the meaning of the provision. The substance of the pleadings, the nature of the property claimed, and the relief sought are, therefore, relevant in determining the applicability of the provision. In **K.A. Abdul Jaleel** (supra), the Hon'ble Supreme Court recognised the wide scope of the Family Court's jurisdiction in property disputes between parties to a marriage, including disputes which survive the dissolution of marriage. The decision supports a liberal construction of the statutory jurisdiction, but the precise nature of the claim must still be examined in the context of the applicable statutory provisions. It has been considered by the Hon'ble Supreme Court that:-

> *"10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. From a perusal of the Statement of objects and reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts matters relating to the property of the spouses or either of them. Section 7 of the Act provides*

for the jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto. Explanation (c) appended to Section 7 refers to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

11. The fact of the matter, as noticed hereinbefore, clearly shows that the dispute between the parties to the marriage arose out of the properties claimed by one spouse against the other. The respondent herein made a categorical statement to the effect that the properties were purchased out of the amount paid in cash or by way of ornaments and the source of consideration for purchasing the properties described in Schedules 'A' and 'B' of the suit having been borne out of the same, the appellant herein was merely a trustee in relation thereto and could not have claimed any independent interest thereupon. It is also apparent that whereas the agreement marked as Exhibit A-1 was executed on 17-9-1994, the appellant pronounced talaq on 1-11-1995. The wording "disputes relating to marriage and family affairs and for matters connected therewith" in the view of this Court must be given a broad construction. The Statement of objects and reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean the properties claimed by the parties thereto as a spouse of the other; irrespective of the claim whether the property is claimed during the subsistence of a marriage or otherwise.

12. The submission of the learned counsel to the effect that this Court should read the words "a suit or proceeding between the parties to a marriage" as parties to a subsisting marriage, in our considered view would lead to miscarriage of justice."

10. The next question is whether the claim made by the petitioner falls within the ambit of Section 27 of the Hindu Marriage Act, 1955. The said provision empowers the matrimonial court to make appropriate orders concerning property presented at or about the time of marriage which may belong jointly to both the husband and the wife. In **Balkrishna Ramchandra Kadam** (supra), the Hon'ble Supreme Court considered the scope of Section 27 and observed that the provision is not confined to property presented strictly at the time of marriage, but

extends to property given before or after marriage, provided it is relatable to the marriage. However, Section 27 cannot be construed as encompassing every monetary transaction between spouses irrespective of its nature or connection with the marriage. In the present case, the petitioner alleges that the amount in question was accumulated from his own earnings after marriage and deposited in the respondent's bank accounts during matrimonial cohabitation. He claims that the funds were entrusted to the respondent under a family arrangement based on trust and were never intended to be an absolute gift. Whether the entire amount constitutes property falling within Section 27, particularly in view of the requirement that the property may belong jointly to the spouses, is a matter distinct from the question of court fees. Nevertheless, the claim cannot be characterised as an ordinary money recovery suit merely on the basis of its monetary valuation, without examining the substance of the pleadings and the statutory basis of the relief sought.

11. It is necessary here to notice the relevant part of the pleadings in the application made by the petitioner, which are as under:-

> *"5. आवेदक द्वारा अनावेदिका के विरुद्ध दाखिल हिन्दू विवाह अधिनियम, 1955 की धारा 9 के अंतर्गत प्रकरण के प्रतिपरीक्षण में अनावेदिका ने स्पष्ट रूप से शपथ पर स्वीकार किया है कि वह आवेदक पर पूर्ण रूप से निर्भर थी तथा उसकी कोई स्वतंत्र आय नहीं थी। अनावेदिका द्वारा स्वीकार किया गया है कि उसके खाते में लगभग ₹2.72 करोड़ आए थे पर उनके स्त्रोतों का ज्ञान नहीं है। चूंकि अनावेदिका ने धारा 9 के प्रकरण में स्वीकार किया है कि उसकी कोई स्वतंत्र आय नहीं थी, और न ही उसे आय के स्रोत की जानकारी है, अतः वह किसी भी राशि को अपनी 'स्व-अर्जित' संपत्ति होने का दावा नहीं कर सकती (Principle of Estoppel)। यह स्वीकारोक्ति भारतीय साक्ष्य अधिनियम, 2023 की धारा 121 के अंतर्गत अनावेदिका को उक्त ₹2,71,13,316/- (₹2.72 करोड़) राशि को अपना स्त्री धन अथवा निजी संपत्ति बताने से रोकती है।*
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> *6. विवाह के निर्वाह काल के दौरान अनावेदिका को आवेदक द्वारा विभिन्न वर्षों में कुल ₹ 2,24,13,316/- (दो करोड़ चौबीस लाख तेरह हजार तीन सौ*

सोलह रुपये) की धनराशि से लाभान्वित किया गया है, जो कि दिनांक 31-03-2022 तक की राशि है। यह राशि शुद्ध रूप से आवेदक की मेहनत की कमाई है, जिसे 'विश्वास पर आधारित पारिवारिक व्यवस्था (Family Arrangement based on Trust)' के तहत अनावेदिका के खातों में जमा रखा गया था। उक्त संदर्भ आयकर रिटर्न से सुसंगत है एवं आवेदक के अन्य परिवार के सदस्यों से समतल। यह अनावेदिका के संभावित बचाव (कि यह पैसा कहीं और से आया) को पहले ही खत्म कर देगा।

7. आवेदक न्यायालय को सूचित करना चाहता है कि मेरी बहन से अनावेदिका को ₹ 47,00,000/-रुपये की राशि से अतिरिक्त रूप से लाभान्वित किया गया है। यह दावा वर्तमान वाद का भाग नहीं है परंतु आवेदक परिवार से लाभवित किए जाने की अतिरिक्त सूचना है, इस प्रकार अनावेदिका को कुल ₹ 2,71,13,316/- से लाभवित किया गया है। आवेदक की बहन से प्राप्त राशि में से आंशिक रूप से अनावेदिका द्वारा लौटाई गई है, और कुल शेष राशि हेतु अलग से वाद दाखिल किया जाना है।

8. उपरोक्त के अतिरिक्त, अनावेदिका द्वारा स्वयं घोषित रूप से स्वीकार किया गया है कि उसे उसके मायके पक्ष से दहेज के रूप में ₹1,80,00,000/- (एक करोड़ अस्सी लाख रुपये) की नकद धनराशि प्राप्त हुई है। यह धनराशि विवाह के समय प्रदान की गई थी तथा इस राशि के विषय में आवेदक को कोई जानकारी नहीं है और न ही इस संपत्ति में किसी प्रकार से कोई दावा इस वाद के माध्यम से प्रस्तुत किया गया है। आवेदक का दावा दहेज प्रतिषेध अधिनियम, 1961 के अंतर्गत प्रभावित नहीं करता।

9. अनावेदिका द्वारा आवेदक एवं उसके परिवारजनों के विरुद्ध भारतीय दंड संहिता की धारा 420, 120बी, 498ए दहेज प्रतिषेध अधिनियम की धारा 3 के अंतर्गत FIR दर्ज करवाई गई है। भारतीय दंड संहिता की धारा 420, 120बी के अंतर्गत दायर प्रकरण में आवेदक की जमानत प्राप्त करने हेतु अनावेदिका को 26,00,010/- (छब्बीस लाख दस रुपये) की धनराशि प्रकरण क्रमांक MCrCA/1776/2022 में प्रदान की गई थी, जो कि आवेदक पर जमानत की अनुमति देने हेतु जबरन थोपी गई थी।

10. चूंकि मुख्य FIR में 3 वर्ष बाद भी कोई आरोप पत्र (Charge sheet) दाखिल नहीं हुआ है, अतः यह सिद्ध होता है कि उक्त राशि केवल दबाव बनाकर प्राप्त की गई थी, अतः यह धनराशि वापसी योग्य है। चूंकि विवाह विच्छेद की कार्यवाही विचाराधीन है एवं यह धनराशि आवेदक द्वारा अनावेदिका को प्रदान की गई थी तथा आवेदक की संपत्ति है, जिसकी वापसी आवेदक को हिन्दू विवाह अधिनियम की धारा 27 के अंतर्गत की जानी चाहिए।

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21. मूल्यांकन एवं न्याय शुल्कः प्रस्तुत विच्छेद आवेदन के अनुतोष हेतु इस आवेदन पर नियमानुसार 5/- रुपये का न्याय शुल्क अदा किया गया है।"

12. The petitioner prayed for the following reliefs in his application before the learned Family Court, which read as under:-

"अतः माननीय न्यायालय से सविनय प्रार्थना है कि:

22. आवेदक द्वारा प्रस्तुत आवेदन स्वीकार किया जाए।

23. Restitution of Property: कुटुम्ब न्यायालय अधिनियम, 1984 की धारा 7(1) स्पष्टीकरण (ग) सहपठित व्यवहार प्रक्रिया संहिता की धारा 151 के अंतर्गत अनावेदिका को निर्देशित किया जाए कि वह आवेदक द्वारा प्रदान की गई धनराशि 2,50,13,326/- (दो करोड़ पचास लाख तेरह हजार तीन सौ छब्बीस रुपये) आवेदक को लौटाए।

24. उक्त धनराशि पर दिनांक 09-02-2023 से 12% वार्षिक ब्याज एवं वाद व्यय प्रदान किया जाए।

25. अनावेदिका द्वारा की गई झूठी शिकायतों के कारण आवेदक को हुए मानसिक कष्ट एवं सामाजिक हानि के लिए व्यवहार प्रक्रिया संहिता की धारा 35ए के अंतर्गत 10,00,000/- का उचित हर्जाना प्रदान किया जाए।

26. प्रकरण के तथ्यों एवं परिस्थितियों को ध्यान में रखते हुए कोई अन्य अनुतोष, जो माननीय न्यायालय आवेदक के पक्ष में उचित समझे, प्रदान किया जाए।"

13. The issue concerning payment of court fees in proceedings of this nature has been considered by the Division Bench of this Court in **Smt. Devika Joshi v. Deepak Joshi**, 2016 SCC OnLine Chh 2145. In the said case, the Family Court had directed the applicant/wife to amend her application seeking return of stridhan by converting it into a plaint, valuing the property for the purposes of pecuniary jurisdiction and paying ad valorem court fees. The Division Bench held that an application under Section 7(1), Explanation (c), of the Family Courts Act, 1984, read with Section 27 of the Hindu Marriage Act, 1955, was maintainable before the Family Court and that the applicant was required to present the proceeding in the form of a plaint in accordance with Section 20 of the Hindu Marriage Act. However, the Court categorically held that the requirement to present the proceeding in the form of a plaint did not entail an obligation to pay ad valorem court fees on the value of the property sought to be recovered. The Court further held that Entry 20-A of Schedule II of the Court Fees Act, 1870, as

applicable in the State of Chhattisgarh, prescribed a fixed court fee of Rs. 40/- for such proceedings under the matrimonial law. Accordingly, the Hon'ble Division Bench concluded that the applicant was neither required to value the property for the purpose of pecuniary jurisdiction nor to pay ad valorem court fees on the value of the stridhan sought to be recovered. The aforesaid decision directly governs the question of court fees where the proceeding is substantively one under Section 7(1), Explanation (c), of the Family Courts Act read with Section 27 of the Hindu Marriage Act. Entry 20-A of Schedule-II of the Court Fees Act is as under:-

20A	*Petition or memorandum of appeal under the Special Marriage Act, 1954 (43 of 1954), or the Hindu Marriage Act, 1955 (25 of 1955).*	***Forty rupees.***

14. The aforesaid principle also requires consideration in the light of the subsequent Full Bench decision of this Court in **Babulal Yadav v. Sonu Yadav**, FA(MAT) No. 40 of 2022, decided on 04.07.2023. The Hon'ble Full Bench recognised that an independent application seeking return of property of the parties or either of them may be entertained by the Family Court under Section 7(1), Explanation (c), of the Family Courts Act, 1984, read with Section 151 of the Code of Civil Procedure, 1908, and that the nomenclature of the application or the provision under which it is filed is not decisive of the jurisdiction of the Court. The decision, therefore, reinforces the proposition that the nature and substance of the claim must be examined rather than its label alone. In the present case, the petitioner has sought restitution of funds allegedly entrusted to the respondent during the subsistence of their marriage,

along with interest and damages. His reliance upon the principles of fiduciary obligation, constructive trust and unjust enrichment may be relevant to the merits of his claim; however, those assertions do not, by themselves, establish that the respondent is legally bound to return the entire amount. At the present stage, the limited question is whether the petitioner can be compelled to pay ad valorem court fees merely because the relief has been quantified at Rs. 2,50,13,326/-. If the proceeding is maintainable in substance as a matrimonial property proceeding under Section 7(1), Explanation (c), of the Family Courts Act, read with the applicable provisions of the Hindu Marriage Act, the ratio of **Devika Joshi** (supra) cannot be disregarded merely because the value of the property claimed is substantial. In para 12 of the **Devika Joshi** case (supra), it has been held that:-

> *"12. It may also be considered that if the present is a petition under section 7(1) Explanation (c) of the Act, 1984 whether it can be treated as a plaint under section 20 of the Act, 1955, however, as discussed above, there being no provision for payment of Court fee for the suits or proceedings for which Family Court has been conferred jurisdiction under section 7 and the issue of payment of Court fee has to be ascertained and cannot be left in vacuum, this Court has to fall back on the substantive law which confers right on the wife or any party to the marriage to maintain a suit or proceeding under the matrimonial law which governs their relationship. It is for this reason, we have drawn support from the language of section 20 of the Act, 1955 and Entry 20-A of the IInd schedule of the Court Fee Act to settle the issue about payment of Court fee. If we consider it from a different perspective; when the Family Court itself directs the appellant to present the application in form of plaint which is the requirement under section 20 of the Act, 1955 then if for one reason, the requirement under the Act, 1955, is treated mandatory, for the other purposes also i.e., for payment of Court fee, the provision applicable in relation to a petition under the Act, 1955 by way of entry 20-A Second schedule, Court Fees Act, 1870, would also be applicable. We, thus, conclude that Court fee of Rs. 40/- is payable on the subject application*

> *and the plaintiff is neither obliged to mention the pecuniary valuation nor pay ad valorem Court fee on the value of the stridhan sought to be repossessed."*

15. Having regard to the statutory scheme and the law laid down in **Devika Joshi** (supra), the impugned direction would not be sustainable if the application is, in substance, a proceeding for restitution of property of the parties or either of them falling within the scope of Section 7(1), Explanation (c), of the Family Courts Act, read with Section 27 of the Hindu Marriage Act, 1955, or is otherwise maintainable as an independent matrimonial property proceeding before the Family Court. The amount claimed, by itself, cannot be the determining factor for imposing ad valorem court fees in disregard of the aforesaid binding precedent. At the same time, the question whether the funds deposited in the respondent's accounts satisfy the substantive requirements of Section 27, or whether the claim is independently maintainable under Section 7(1), Explanation (c), read with Section 151 of the CPC, must be determined in accordance with the pleadings and applicable law. The petitioner's allegations regarding the source of the funds, the respondent's alleged admissions, and the existence of a fiduciary arrangement are matters for adjudication on their merits and shall not be treated as established merely for the purpose of deciding court fees.

16. In view of the foregoing discussion, the writ petition is **allowed**. The impugned order, to the extent it directs the petitioner to pay ad valorem court fees on the amount of Rs. 2,50,13,326/-, is hereby **set aside**. In view of the law laid down by the Hon'ble Division Bench of this Court in **Devika Joshi** (supra), the petitioner shall not be required to pay ad valorem court fees on the amount claimed, provided the proceeding is

maintained as a property of the parties or either of them, falling within the scope of Section 7(1), Explanation (c), of the Family Courts Act, 1984, read with the applicable provisions of the Hindu Marriage Act, 1955. The petitioner shall be liable to pay only the fixed court fee prescribed under Entry 20-A of Schedule II of the Court Fees Act, 1870, as applicable in the State of Chhattisgarh.

17. The learned Family Court is directed to proceed with the matter in accordance with law and decide the case on its own merits, uninfluenced by any observation made herein regarding the petitioner's entitlement to recover the amount claimed.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sumit