2026:CGHC:536-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 197 of 2024

{Arising out of judgment and decree dated 22-2-2024 in Civil Suit No.356A/2022 of the Principal Judge, Family Court, Janjgir, District Janjgir-Champa}

Judgment reserved on: 19-12-2025

Judgment delivered on: 06-01-2026

Judgment uploaded on: 06-01-2026

[redacted]

(Defendant)
... Appellant

versus

[redacted]

(Plaintiff)
... Respondent

For Appellant	:	Mr. Himanshu Kumar Sharma, Advocate.
For Respondent	:	Mr. Shobhit Koshta, Advocate.
Amicus Curiae	:	Mr. Manoj Paranjpe, Senior Advocate with Mr. Rishabh Gupta, Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay Kumar Jaiswal, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. Feeling aggrieved and dissatisfied with judgment & decree dated 22-2-2024 passed by the Principal Judge, Family Court, Janjgir, District

Janjgir-Champa in Civil Suit No.356A/2022, the appellant herein/ defendant has preferred this appeal under Section 19 of the Family Courts Act, 1984, questioning the said judgment & decree by which the Family Court has decreed the suit filed by the plaintiff/respondent herein granting decree of dissolution of marriage in favour of the plaintiff.

2. In this first appeal preferred by the appellant herein/defendant, the following two questions arise for determination: -

    1. Whether the Family Court is legally justified in proceeding ex parte against the appellant herein/defendant and further justified in passing ex parte decree granting decree of divorce in favour of the respondent herein/plaintiff?

    2. Whether the Family Court is justified in refusing to provide legal aid to the appellant herein/defendant on the ground that she has failed to make a written application to the District Legal Services Authority seeking legal aid?

    And/or

    Whether the Family Court is justified in not appointing *amicus curiae* as per Section 13 of the Family Courts Act, 1984 read with Rule 14 of the Chhattisgarh Family Courts Rules, 2007?

3. The aforesaid decree impugned passed by the Family Court has been challenged 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.)

3.1) Marriage of the appellant herein/defendant was solemnized with the respondent herein/plaintiff as per Hindu rites and customs on 3-7-2007 at Marwadi Dharamshala, Naila, District Janjgir-Champa and out of the said wedlock, they were blessed with two children namely Chirag, who was born on 28-6-2008 and Ansh, who was born on 24-9-2011. Matrimonial discard took place between them leading to filing of application under Section 13 of the Hindu Marriage Act, 1955 by the husband for dissolution of marriage, on 26-9-2022 before the Principal Judge, Family Court, Janjgir, District Janjgir-Champa, which was registered as Civil Suit No.356A/2022 in which the plaintiff/husband has sought for appointment of *amicus curiae* for his legal representation in the matter by filing an application under Section 13 of the Family Courts Act, 1984. However, notices were issued to the defendant/wife and ultimately, the defendant/wife appeared before the Family Court and on 22-12-2022, the services of *amicus curiae* were granted to the plaintiff/husband under Rule 14 of the Chhattisgarh Family Courts Rules, 2007 and thereafter, the case was fixed for reconciliation and filing of written statement on 28-11-2023 by the Family Court and on that day, both the parties appeared and the matter was sent for consideration before the National Lok Adalat to be held on 16-12-2023, but on account of absence of the defendant/wife, the matter could not be considered in

the National Lok Adalat and it was sent to the regular court fixing the date on 16-1-2024. On 16-1-2024, the defendant/wife could not appear and she was proceeded ex parte and the case was fixed for recording of plaintiff's evidence on 29-1-2024. On 29-1-2024, the defendant/wife appeared, but expressed her inability that on account of her financial condition, she is unable to engage counsel for which the Family Court advised her to approach the District Legal Services Authority at 1.50 p.m., thereafter the matter was again taken-up for hearing at 4.35 p.m. and in that proceeding the Family Court has recorded that the defendant/wife did not approach the District Legal Service Authority, therefore, affidavit of the plaintiff/husband and his two witnesses namely, Abhishek Agrawal & Anshuman Sharma under Order 18 Rule 4 of the CPC were taken on record and the matter was fixed for plaintiff's evidence on 3-2-2024 and thereafter, the matter was fixed for final argument on 19-2-2024. On 19-2-2024 final argument was heard and ultimately, judgment & decree was passed on 22-2-2024 dissolving the marriage between the parties and refusing to grant permanent alimony.

4. Feeling aggrieved and dissatisfied with the judgment & decree impugned, the instant appeal has been preferred under Section 19(1) of the Family Courts Act, 1984 by the appellant herein/ defendant/wife stating that the Family Court has erred in granting decree of dissolution of marriage in favour of the plaintiff/husband.

5. Mr. Himanshu Sharma, learned counsel appearing on behalf of the appellant herein/defendant/wife, would submit that the Family Court is absolutely unjustified in proceeding ex parte against the appellant herein/defendant/wife and in not granting any legal aid to her. He would further submit that affidavits of the plaintiff/husband and his two witnesses were taken on record on 29-1-2024. He would also submit that the Family Court has also not provided the services of an *amicus curiae* to the defendant/wife as provided under Rule 14 of the Chhattisgarh Family Courts Rules, 2007 and thereby the impugned judgment deserves to be set aside.

6. Mr. Shobhit Koshta, learned counsel appearing on behalf of the respondent herein/plaintiff/husband, would submit that since the matter could not be considered in the Lok Adalat, it was fixed before the regular court on 16-1-2024 and on that day, the defendant/wife did not appear before the Family Court and, therefore, the Family Court has rightly proceeded ex parte against her. He would further submit that on 29-1-2024, the defendant/wife was advised to make an application before the District Legal Services Authority, which she did not make and, therefore, the Family Court has rightly proceeded for recording of the plaintiff's evidence and after hearing the plaintiff/husband, the impugned decree has been passed which is in accordance with law, as such, the appeal deserves to be dismissed. He would also submit that by virtue of Section 10 of the Family Courts Act, 1984, the Code of Civil Procedure, 1908, is not fully

applicable to the proceeding before the Family Court and thus, the Code of Civil Procedure, 1908, would not be applicable to the proceeding before the Family Court, as such, the present appeal deserves to be dismissed.

7. Mr. Manoj Paranjpe, learned Senior Advocate appearing as *amicus curiae*, would submit that 16-1-2024 was the date fixed for consideration of the matter before the National Lok Adalat and it was not the date fixed for hearing. He would further submit that by virtue of Sections (5), (6) & (7) of Section 20 of the Legal Services Authorities Act, 1987, the Family Court has to proceed to deal with such case from the stage which was reached before such reference under sub-section (1) and that is for conciliation/filing of written statement, therefore, 16-1-2024 was not the date fixed for hearing and as such, the Family Court could not have proceeded *ex parte* against the defendant/wife. He would also submit that since on 29-1-2024, the defendant/wife expressed her inability orally before the Family Court that she is unable to engage counsel and she could not appear before Court from Sambalpur (Odisha) on each and every date of hearing, therefore, the Family Court ought to have provided legal aid to her in light of Regulation 3(5) of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, as oral requests for legal services may also be entertained in the same manner as an application under sub-regulations (1) and (2) and the Family Court is absolutely unjustified

in merely asking her to make application before the District Legal Services Authority and thereafter in proceeding further with the matter without providing any legal aid to her. Mr. Paranjpe, learned *amicus curiae*, would further contend that under Rule 14 of the Chhattisgarh Family Courts Rules, 2007, the assistance of a legal expert as *amicus curiae* would have been provided to the defendant/wife at the State cost in the interest of justice for which fees and expenses have to be borne out of revenues of the State, which the Family Court has failed in both the counts by not providing legal aid and also not providing *amicus curiae* under Rule 14 of the Chhattisgarh Family Courts Rules, 2007, thereby the judgment & decree impugned cannot be sustained and liable to be set aside.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

Re: Question No.1: -

9. Question No.1 is reproduced herein-below for ready reference: -

> "Whether the Family Court is legally justified in proceeding ex parte against the appellant herein/defendant and further justified in passing ex parte decree granting decree of divorce in favour of the respondent herein/plaintiff?"

10. On 28-11-2023, both the parties were present before the Family Court and the case was fixed for reconciliation and filing of written statement and on the request of the parties, the matter was directed to be placed before the National Lok Adalat to be held on 16-12-

2023, but in the National Lok Adalat, the defendant/wife could not appear, therefore, the case was directed to be relisted before the regular Family Court on 16-1-2024. Admittedly, 16-1-2024 was not the date fixed for hearing before the Family Court. In this regard, the provisions contained in Section 20 of the Legal Services Authorities Act, 1987, which deals with cognizance of cases by Lok Adalats, particularly, sub-sections (5), (6) & (7) may be noticed herein profitably, which provide as under: -

> "**20. Cognizance of cases by Lok Adalats**.—(1) to (4) xxx
>
> (5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.
>
> (6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.
>
> (7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)."

11. A careful perusal of the aforesaid provision would show that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law and where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at

between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in the court and further, sub-section (7) of Section 20 of the Legal Services Authorities Act, 1987, provides that where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1), meaning thereby, in the instant case, before making reference to the National Lok Adalat on 16-12-2023, the case was listed for reconciliation between the parties and for filing of written statement, which was admittedly not the date of hearing of suit.

12. The question as to what is the meaning of "hearing of the suit" came to be considered by the Madhya Pradesh High Court in the matter of **Rambabu Ghasilal Goyal v. Bhagirath Prasad Basantilal**[1] wherein it has been held that Order 17 Rule 2 read with Order 9 Rule 6 of the CPC would be attracted to mean a suit to have been fixed for hearing, only when the date fixed should be for taking up of evidence, hearing of arguments or considering the questions relating to the suit, which is distinct from interlocutory matters, and the suit could not be proceeded *ex parte* on the date when it is fixed only on hearing of interlocutory matters, and it was observed as under: -

> **"7.** In order that a suit may be regarded to have been fixed for hearing, it should be the date for taking up of evidence, or hearing of arguments, or considering of questions relating to the suit, which would enable the Judge to finally come to an adjudication upon it, and not for consideration of merely

1 1983 MPLJ 455

interlocutory matters. In this case, the trial Court, purporting to act under Order. 17, Rule 2 read with Order 9, Rule 6, Civil Procedure Code, appears to have acted on the assumption that from 7-8-1981, the "hearing of the suit" was adjourned to 21-8-1981 and that the latter date was a date to which the "hearing of the suit" had been adjourned. In this respect, the trial Court appears to have acted in oblivion of the correct position of law governing the situation. Order 17, Rule 2, Civil Procedure Code provides that-

> "Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit."
>
> (Emphasis supplied.)

Order 9, Civil Procedure Code refers to cases of default of appearance of parties at the first hearing, whereas this Rule (Rule 2 of Order 17) makes the provisions of Order 9 applicable to cases of such default on the adjourned hearing. Now, even on the adjourned hearing, in order that the Court may, on failure of a party to appear, proceed to dispose of the suit in one of the modes directed in that behalf by Order 9, it is necessary that the hearing of the suit should have been adjourned from an earlier date to a subsequent date. To put it differently, if the hearing of the suit is not so adjourned, the trial Court will have no jurisdiction to proceed in one of the modes directed in that behalf by Order 9, or make such order as it thinks fit. I am fortified in this view by the ratio of the decision in *Balmukund* v. *Lachmi Narain*, AIR 1920 Pat. 595, wherein it has been held that-

> "Rules 2 and 3 of Order 17, apply only to cases where the actual hearing of the suit has been adjourned, and by the hearing of the suit it meant the hearing at which the Judge would be either taking evidence or hearing arguments or would have to consider questions relating to the determination of the suit which would enable him finally to come to au adjudication upon it. But in cases where it was clearly never intended - that there should be a hearing of the suit in the ordinary sense of the word but merely some interlocutory matter decided between the parties as to the future conduct of the suit, the provisions of these rules have no application."

The law on the point has been further laid down in *Manohar Dass* v. *Birandari Sheikhupurain*, AIR 1936 Lah. 280, thus:

> "By the hearing of the suit is meant the hearing at which the Judge would be either taking evidence or hearing arguments or would have to consider questions relating to the determination of the suit which would enable him finally to come to an adjudication upon it.
>
> In a case where a Commissioner is appointed and is asked to submit his report by a certain date and the Commissioner before that date files an application praying for an extension of time, it is for the Court to extend the time which the Commissioner asks for or it can refuse it. The parties have nothing to do with the matter. The date on which the Court expected the report of the Commissioner is not "the date of the hearing."

In *Balmukund Ram Marwari* v. *Madho Prashad*, AIR 1924 Pat. 714, where the suit was adjourned for appointment of a guardian on plaintiff's petition and the suit was dismissed in default of the plaintiff's appearance, it was held that the suit could not be so dismissed for default, nor the date so fixed could be regarded to be a date fixed for disposal of the suit.

*** *** ***

11. In this view of the matter, the trial Court had no jurisdiction to proceed *ex parte* against the defendant on 21.8.1981. As a logical corollary flowing from this legal position, it has further to be held that all subsequent orders, passed by the trial Court, without jurisdiction. As a sequel to the aforesaid discussion, it is clear that the impugned order manifests exercise of jurisdiction in an illegal manner and/or with material irregularity. If the impugned order is allowed to stand, the defendant-applicant herein will suffer irreparable injury and it will occasion failure of justice also.**"**

13. One of us (Sanjay K. Agrawal, J.) also in the matter of **Smt. Umaravati Bai (Died) v. Brijmohan Sahu and others**[2], has taken a similar view and clearly held that when the matter is fixed for interlocutory proceeding and not for hearing of the suit or for

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recording of evidence or for questions relating to hearing of the suit, such proceeding cannot be called as hearing of the suit.

14. In the instant case, as per Section 20(7) of the Legal Services Authorities Act, 1987, before making reference, the case was fixed for reconciliation between the parties and for filing of written statement and as it was fixed for interlocutory proceeding and it was not fixed for hearing of suit, the Family Court was jurisdiction-less to proceed ex parte on 16-1-2024 against the defendant/wife in light of the principle of law laid down in **Rambabu Ghasilal Goyal** (supra) and **Smt. Umaravati Bai (Died)** (supra), as when the case was called-up, it was not fixed for hearing of suit.

15. At this stage, argument of learned counsel for the defendant/wife that by virtue of Section 10 of the Family Courts Act, 1984, which deals with the procedure to be applied in the Family Court, the provisions of the Code of Civil Procedure, 1908, would not be applicable, deserves to be considered. Sections 10 & 14 of the Family Courts Act, 1984 state as under: -

> "**10. Procedure generally**.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
>
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the

proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

14. Application of Indian Evidence Act, 1872.—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

16. A careful perusal of Section 10(1) of the Family Courts Act, 1984 would reveal that it empowers a Family Court to be a Civil Court for the purposes of exercising all powers vested in a Civil Court and the provisions of the CPC have been made applicable to the proceedings before the Family Court, but at the same time, it has been expressly stipulated in Section 10(1) of the Act of 1984 itself that such application of the CPC shall be "subject to the other provisions of this Act and the Rules". Sub-section (3) of Section 10 of the Act of 1984 postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with the matter in issue before it i.e. for arrival at a settlement in respect of the lis of any suit/proceedings before it or to determine the truthfulness of the facts in dispute. This provision by itself would clearly demonstrate that the legislature, while broadly mandating for application of the CPC to proceedings before a Family Court, has vested discretion in favour of such Family Court to devise a

procedure on its own, as Section 20 of the Act of 1984 contains a clause having overriding effect vis-a-vis anything contained in any other law for the time being in force. Consequently, it is held that

1. Sub-section (3) of Section 10 read with Section 20 of the Act of 1984 contains *non obstante* clause and gives supremacy to the provisions of the said Act vis-a-vis the provisions of other enactments/CPC.
2. The provisions of the CPC shall not apply to the proceedings before the Family Court with its full rigours such as applicable to the other provisions, however, a Family Court is entitled to lay down its own procedure, as warranted by facts/ circumstances of a given case.
3. A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfills the requirements of the Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

17. In the instant case, it is not the case of the plaintiff/husband that the Family Court has devised its own procedure in accordance with Section 10(3) of the Act of 1984 or that Order 9 Rule 6 or Order 17 Rule 2 of the CPC would not apply in the proceeding before the Family Court. As such, in view of the aforesaid discussion, the Family Court is absolutely unjustified in proceeding ex parte against the defendant/wife on 16-1-2024 and therefore the subsequent

proceeding is liable to be set aside being without jurisdiction. Question No.1 is answered accordingly.

Re: Question No.2: -

18. Question No.2 is reproduced herein-below for ready reference: -

> "Whether the Family Court is justified in refusing to provide legal aid to the appellant herein/defendant on the ground that she has failed to make a written application to the District Legal Services Authority seeking legal aid?"

19. On 16-1-2024, the Family Court after proceeding ex parte against the defendant/wife, fixed the case on 29-1-2024. On 29-1-2024, the defendant/wife appeared in person before the Family Court and expressed orally that she is financially weak and therefore she cannot take the services of an Advocate/legal expert and also expressed her inability to remain present before the Court all the way from Sambalpur (Odisha) on each and every date of hearing on which the Family Court advised her to approach the District Legal Services Authority seeking legal aid. However, thereafter, when the case was taken up for hearing at 4.35 p.m., the defendant/wife did not appear and the Family Court enquired from the Office of the District Legal Services Authority and came to know that she has not approached the District Legal Services Authority and therefore proceeded to record evidence and fixed the case on 3-2-2024. In the opinion of this Court, the Family Court has legally erred in not providing free legal aid to the defendant/wife as per Regulation 3(5) of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 on the oral request made by her and

also failed to provide the services of *amicus curiae* on the State expenses as provided under Rule 14 of the Chhattisgarh Family Courts Rules, 2007, which resulted in miscarriage of justice.

20. At this stage, it would be appropriate to notice Regulation 3 of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, which states as under: -

> "**3. Application for legal services**.—(1) An application for legal services may be presented preferably in Form I in the local language or English.
>
> (2) The applicant may furnish a summary of his grievances for which he seeks legal services, in a separate sheet along with the application.
>
> (3) An application, though not in Form I, may also be entertained, if reasonably explains the facts to enable the applicant to seek legal services.
>
> (4) If the applicant is illiterate or unable to give the application on his or her own, the Legal Services Institutions may make arrangement for helping the applicant to fill-up the application form and to prepare a note of his or her grievances.
>
> (5) Oral requests for legal services may also be entertained in the same manner as an application under sub-regulations (1) and (2).
>
> (6) An applicant advised by the para-legal volunteers, legal aid clubs, legal aid clinics and voluntary social service institutions shall also be considered for free legal services.
>
> (7) Requests received through e-mails and interactive on-line facility also may be considered for free legal services after verification of the identity of the applicant and on ensuring that he or she owns the authorship of the grievances projected."

21. A careful perusal of the aforesaid provision would show that an application for legal services may be presented preferably in Form I

in the local language or English. However, sub-regulation (5) of Regulation 3 also provides that oral requests for legal services may also be entertained in the same manner as an application under sub-regulations (1) and (2). Here, in the present case, though oral request was made by the defendant/wife for providing legal aid, but the Family Court did not take pain to direct the District Legal Services Authority to provide immediate free legal aid to her, rather discharged its duty by simply asking her to go and obtain free legal aid from the District Legal Services Authority by which she left the premises in absence of any assistance and ultimately, no legal aid was provided to her and the Family Court has proceeded *ex parte* against her and *ex parte* decree was also passed against her.

22. In the present case, since the appellant did not make written application for legal assistance, legal aid was not provided to her. In this regard, the decision of the Supreme Court in the matter of **Khatri (II) v. State of Bihar**[3] deserves to be noticed herein profitably. In that case also, the accused was not informed that he was entitled to free legal assistance nor the accused was inquired whether he wanted a lawyer to be provided to him at State cost and the accused remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. Their Lordships of the Supreme Court held that it was clearly a violation of the fundamental right of the accused under Article 21 of the Constitution of India and the trial must accordingly

3 (1981) 1 SCC 627

be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the accused must be set aside. The decision in **Khatri (II)** (supra) was followed by the Supreme Court in the matter of **Suk Das v. Union Territory of Arunachal Pradesh**[4].

23. In the instant case also, the Family Court not only remained technical after noticing that the defendant/wife is in utmost need of free legal aid, but also shirked from its responsibility by directing her to take-up the appropriate proceeding before the District Legal Services Authority for getting legal assistance, however, did not direct the District Legal Services Authority on its own, as oral request can also be entertained for providing legal assistance and the Family Court could have directed the District Legal Services Authority to provide her free legal aid. The Family Court instead of obtaining information from the District Legal Services Authority whether the defendant/wife has approached for legal aid, could have directed the DLSA to provide legal assistance to her, however, it has failed to do so, which resulted in serious miscarriage of justice to her and *ex parte* decree was passed against her which resulted in violation of her fundamental right guaranteed under Article 21 of the Constitution of India as held by the Supreme Court in **Suk Das** (supra) followed in the matter of **Suhas Chakma v. Union of India and others**[5].

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4 (1986) 2 SCC 401
5 2024 SCC OnLine SC 3031

24. This can be considered from another angle. Section 13 of the Family Courts Act, 1984 may be noticed herein, which states as under: -

> **"13. Right to legal representation**.—Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner.
>
> Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*."

25. A careful perusal of the aforesaid provision would show that no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner. However, the proviso appended to Section 13 gives jurisdiction to the Family Court that in appropriate cases, if it considers it necessary, it may seek the assistance of a legal expert as *amicus curiae*, in the interest of justice.

26. As such, Section 13 of the Family Courts Act, 1984 prohibits a legal practitioner to appear before the Family Court as a matter of right. However, the Family Court has been conferred with power and jurisdiction by the proviso to Section 13 of the Act of 1984 in the interest of justice to seek the assistance of a legal expert as *amicus curiae* to assist the court. As such, Section 13 of the Act of 1984 indicates that there is no total prohibition of being represented by a legal practitioner.

27. By virtue of Section 23(d) of the Family Courts Act, 1984, the State of Chhattisgarh after consultation with the High Court of Chhattisgarh

has framed rules for payment of fees and expenses to legal practitioners appointed under Section 13 as *amicus curiae* out of the revenues of the State Government and the scales of such fees and expenses. The said rules are known as the Chhattisgarh Family Courts Rules, 2007. Rule 14 of the Chhattisgarh Family Courts Rules, 2007 states as under: -

> "**14. Amicus Curiae**—(1) The Family Court shall maintain a panel of legal experts including legal practitioners, willing to be appointed as *amicus curiae*.
>
> (2) Where it appears to the Family Court that the assistance of a legal expert as *amicus curiae* is necessary in the interest of justice, the Court may appoint a legal expert from the said panel.
>
> (3) The *amicus curiae*, appointed under sub-rule (2) may be paid by the Family Court of revenues of the State, fees and expenses at the rates of Rupees Five Hundred per case or proceedings or as fixed by the Family Court not exceeding Rs. 5000/- (Rupees Five thousand).
>
> (4) The Family Court may remove the *amicus curiae* at any time, if it deems necessary in the interest of justice."

28. Rule 14(1) of the Chhattisgarh Family Courts Rules, 2007 obliges the Family Court to maintain a panel of legal experts including legal practitioners, willing to be appointed as *amicus curiae*. Sub-rule (2) of Rule 14 reiterates the proviso to Section 13 of the Family Courts Act, 1984, where it appears to the Family Court that the assistance of a legal expert as *amicus curiae* is necessary in the interest of justice, the Court may appoint a legal expert from the said panel. However, sub-rule (3) of Rule 14 clearly mandates that the *amicus curiae*, appointed under sub-rule (2) may be paid by the Family

Court of revenues of the State, fees and expenses at the rates of ₹ 500/- per case or proceedings or as fixed by the Family Court not exceeding ₹ 5,000/-. Grant of free legal aid is implicit in sub-rule (3) of Rule 14, once *amicus curiae* is appointed in the interest of justice to appear for a party to the suit, fee and expenses of *amicus curiae* will be provided by the Family Court out of the revenues of the State.

29. In the instant case, once the defendant/wife expressed her inability that on account of her poor financial condition she cannot engage a counsel and she cannot appear on each and every date of hearing and though the Family Court came to the conclusion that she needs legal aid that too free legal aid, it ought to have appointed *amicus curiae* under Rule 14(1) of the Chhattisgarh Family Courts Rules, 2007 from the panel of legal experts including legal practitioners maintained by the Court, as the Family Court had already made up its mind that in the interest of justice, legal experts to be appointed and that too free of cost in the interest of justice and in that event, fee could have been paid out of the State fund as provided under Rule 14(3) and grant of free legal aid is implicit in Rule 14(3).

30. Assuming that the Family Court has not maintained the list of panel of legal experts including legal practitioners, the list of panel of legal experts including *amicus curiae* ought to have been directed to the District Legal Services Authority to appoint a counsel for appearing as *amicus curiae* under proviso to Section 13 of the Family Courts Act, 1984, as the Family Court had already made up its mind that

appointment of *amicus curiae* is in the interest of justice in view of the statement made and duly recorded in the order sheet dated 29-1-2024. As such, rather than advising the defendant/wife who was all alone in the court to avail the services of free legal aid and make application and thereafter inquiring from the Office of the District Legal Services Authority and thereafter recording that she has not approached the DLSA, the Family Court could have directed the DLSA to provide the services of a legal expert/Advocate as *amicus curiae*. Such a technical approach on the part of the Family Court cannot be countenanced and it is hereby deprecated. Non-providing of services of *amicus curiae* read with proviso to Section 13 of the Family Courts Act, 1984 and Rule 14(2) of the Chhattisgarh Family Courts Rules, 2007 has resulted in miscarriage of justice and denial of fundamental/constitutional right to have free legal assistance. Therefore, the impugned judgment & decree are liable to be set aside on this count also.

31. The Supreme Court also in the matter of **Brijesh Kumar v. State of Uttar Pradesh**[6] relying upon its earlier decisions in the matters of **Rakesh v. State of M.P.**[7] and **Sk. Mukthar v. State of A.P.**[8] has held that the right to legal representation sits at the core of not only the right to life and liberty conferred by Article 21 of the Constitution, but at the very foundation of the entirety of our justice system, be it civil or criminal. Their Lordships further held that the right to legal

6 (2021) 19 SCC 177
7 (2011) 12 SCC 513
8 (2020) 19 SCC 178

representation must be available to every citizen irrespective of economic class or financial resources.

32. As such, in light of judgment of the Supreme Court in **Suhas Chakma** (supra) following in the matter of **Suk Das** (supra), it is held that free legal assistance for poor and indigent at the cost of the State is a fundamental right of a person under Article 21 of the Constitution of India even if the person does not seek legal assistance on his own.

33. As such, once the defendant/wife has come to the Court expressing her inability to engage the services of a legal practitioner, the Family Court was duty bound to either appoint *amicus curiae* as per the provision contained in Rule 14 of the Chhattisgarh Family Courts Rules, 2007, or directed the appropriate Legal Services Authority to provide legal aid to her by appointment of an Advocate to represent her before the Family Court and, as such, not providing free legal aid to appellant at appropriate time has resulted in violation of her fundamental right under Article 21 of the Constitution of India. Question No.2 is answered accordingly.

34. Consequently, the impugned judgment & decree are liable to be set aside on the ground that the Family Court had no jurisdiction to proceed *ex parte* when the case was listed for hearing on 16-1-2024 and it is hereby set aside. The Family Court is directed to take up the case from the stage of proceeding dated 28.11.2023. Furthermore, the District Legal Services Authority, Janjgir-Champa is

directed to provide free legal aid to the defendant/wife in accordance with the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010. Parties are directed to appear before the Family Court on **29-1-2026**.

35. The appeal stands allowed. No order as to cost(s).

36. (1)- Before parting with the record, we consider it necessary to restate the statutory duty of the Family Courts as provided under the provisions of the Family Courts Act, 1984 read with Rule 14(1) of Chhattisgarh Family Courts Rules, 2007 *(for short "the Rules of 2007")* to maintain a panel of legal experts including legal practitioners willing to be appointed as amicus curiae. The statutory framework clearly requires the Family Courts to ensure that parties in family disputes who are unable to engage advocates due to financial or other genuine difficulties are provided effective legal assistance. The object of the Act of 1984 and the Rules of 2007 is not merely to decide family disputes, but to secure real and meaningful access to justice, particularly for women, children and other vulnerable litigants, in keeping with the constitutional principles of fairness and equal justice.

(2)- It has come to our notice that, in actual practice, most of the Family Courts are generally been relying only upon the panel of advocates maintained by the District Legal Services Authority for providing such assistance, without maintaining a separate panel as

contemplated under Rule 14(1) of the Rules of 2007, which is not proper. Merely recording in an order that the litigant may approach to the District Legal Services Authority for legal aid and legal assistance without ensuring actual and timely legal representation, defeats the purpose of the statutory mandate. The responsibility cast upon the Family Court(s) cannot be treated as an empty formality and must be discharged in a direct and effective manner.

(3)- Accordingly, we direct the Family Courts in the State of Chhattisgarh who have not maintained a list of legal experts as mentioned in Rule 14 (1) of the Rules of 2007 to constitute and maintain a separate panel of advocates expeditiously without further delay as mandated by the Rules of 2007 and whenever it is found that a party is unable to engage an advocate and interest of justice so requires, as per Rule 14(2) of the Rules of 2007, the Family Court shall itself assign a legal expert from its panel so maintained to provide legal assistance, instead of referring the matter to the District Legal Services Authority. The fees payable to such panel advocates shall be borne by the State Government and shall form part of the free legal aid as per Rule 14(3) of the Rules of 2007. This direction is issued to ensure effective delivery of justice and to uphold the constitutional mandate of access to justice in family matters.

37. A copy of this judgment be sent to all the Family Courts of the State to follow Rule 14(1) of the Chhattisgarh Family Courts Rules, 2007, in its letter and spirit.

38. Decree be drawn-up accordingly.

39. We place on record our appreciation for the assistance rendered by Mr. Manoj Paranjpe, learned Senior Counsel, who appeared as *amicus curiae* and made submissions.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Sanjay Kumar Jaiswal)
JUDGE

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