



No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order
03	15.12.06	<p>The Petitioner, who is husband of the Respondent, has knocked the door of this Court under Article 227 of the Constitution of India assailing validity of the Orders dated September 08 and 23, 2006 passed by the learned Judge, Family Court, Sikkim at Gangtok as contained in Annexures P-3 and P-5 respectively.</p> <p>[2] Heard Mrs. Laxmi Chakraborty, learned Counsel appearing for the Petitioner and Mr. N. Rai, learned Counsel appearing on behalf of Respondent.</p> <p>[3] Matrimonial Suit No. 122 of 2005 has been filed by the Petitioner for restitution of his conjugal rights under Section 9 of the Hindu Marriage Act, 1955 at Siliguri (West Bengal) whereas Family Court (Civil) Case</p>	



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>No. 60 of 2005 at Gangtok has been filed for his divorce by the Respondent.</p> <p>[4] The Respondent filed a petition under Sections 24 and 25 of the Hindu Marriage Act, 1955 Family Court Case No. 19 of 2005 for granting maintenance, pendente lite and litigation expenses apart from permanent alimony as contained in Annexure P-1 on the ground that her husband started ill-treating and torturing her, who also deserted her and made her life miserable and poor; She has no own source of income; and all sincere efforts to bring her husband at home and take her care had gone in vain.</p> <p>[5] The Petitioner filed a petition before the Judge, Family Court for staying the Matrimonial proceedings on the following grounds: -</p>	



Order Order

Order with Signature

Office Note as to
action (if any)
taken on Order

(ii) This Court cannot stay the instant proceedings in the absence of any Order from a superior Court.

[8] Mrs. Laxmi Chakraborty, learned Counsel appearing on behalf of the Petitioner contended as following: -

(i) The learned Judge has committed an error in observing that no document has been furnished.

(ii) The learned Judge has failed to consider the effect of Section 10 of the C.P.C. and in the peculiar facts and circumstances, it ought to have stayed her hands.

[9] ~~In reply~~ Mr. N. Rai, learned counsel appearing on behalf of the Respondent, contended that it is fact that no document was furnished by the Petitioner before the Judge, Family Court. In view of Section 21



No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>(i) He has already filed a petition for restitution of his conjugal rights before the Additional District Judge, Fast Track Court, Siliguri and if the instant case is allowed to proceed further, the very purpose of his Suit will become infructuous</p> <p>(ii) He is ready and willing to take back his wife to his house at Siliguri.</p> <p>[6] The prayer of the Petitioner was opposed on the grounds mentioned in paragraph 4 of the impugned Order.</p> <p>[7] The learned Judge, Family Court rejected the Petitioner's prayer on the following grounds: -</p> <p>(i) No document has been furnished to show when the application for restitution of conjugal rights was filed before the Siliguri Court.</p>	



No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order
--------------	----------	----------------------	--

of the C.P.C. objection in regard to the instant Suit at Gangtok shall have been taken at the first instance and at the earliest opportunity and unless the Petitioner shows that there has been consequent failure of justice, this writ petition is fit to be rejected.

[10] Mrs. L. Chakraborty, in reply, contended that as in the Family Court lawyers are not permitted to appear, therefore, the Petitioner could not raise his objection earlier before the Gangtok Court and its non raising of no consequence.

[11] The facts speak for themselves in relation to the strange relationship between the Petitioner and the Respondent. In order to appreciate the differences, we also enquired from the wife yesterday, who is also present in Court today. We do not want to



Order

Order

Order with Signature

Office Note as to
action (if any)
taken on Order

reduce in writing her plight as narrated by her as the matter is still subjudice. It is clear that the Petitioner has not raised any objection to the jurisdiction of the Judge, Family Court, Sikkim at Gangtok to decide the case on its merit. Section 21 of the C.P.C., strongly relied upon by the learned counsel for the Respondent, comes to her aid. It is also not the case of the Petitioner that he has earlier prayed for granting permission to avail services of a lawyer.

[12] Be that as it may, we do not consider it to be a fit case in which we should exercise our discretion under Article 227 of the Constitution of India.

[13] Vide Order dated 23.09.2006, as contained in Annexure P-5, the learned Judge, Family Court has directed the



No. of
Order

of
Order

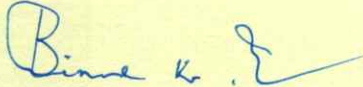
Order with Signature

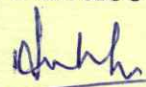
Office Note as to
action (if any)
taken on Order

Petitioner to pay the Respondent a sum of Rs,3,000/- per month with effect from October 2006 as maintenance allowance, apart from Rs.2,500/- from October 2005 till September 2006 and Rs.1200/- as litigation expenses.

[14] We do not find any illegality nor the learned Counsel could show us any.

[15] Accordingly we dismiss this Writ Petition, but without cost.


(Binod Kumar Roy)
Chief Justice


(A.P. Subba)
Judge

True Court records
alongwith a copy of
certified copy forwarded
on 5-1-07.

lunars
5/1/07