

RESTITUTION OF CONJUGAL RIGHTS – ONLY HUSBAND OR WIFE CAN MAINTAIN PETITION
UNDER SECTION 9 , HINDU MARRIAGE ACT

II (2009) DMC 665 (DB)

UTTARAKHAND HIGH COURT

Prafulla C. Pant & B.S. Verma, JJ.

SARVESH MOHAN SAXENA -- Appellant

Versus

SANJU SAXENA -- Respondent

First appeal No. 77 of 2008 - Decided on 29.7.2009

Family Courts Act,1984 – Section 19 – Hindu Marriage Act, 1955 –Sections 9, 5, 5(i), 5(iv), 5(v), 11 and 28 – Restitution of conjugal rights – Only husband or wife can maintain petition under Section 9 , Hindu Marriage Act – Marriage between petitioner and husband null and void – petition under Section 9 of Hindu Marriage Act not maintainable – Petitioner developed illicit relations with respondent and got married to her while his first wife was living , at the time of such marriage – Marriage between petitioner and respondent was in violation of condition No.(i) of section 5, Hindu Marriage Act, which requires that at the time of marriage none of the parties should have a living spouse – Petitioner (present appellant) cannot maintain petition against present respondent under Section 9 of Act – No reason to interfere with impugned order passed by learned Judge, Family Court. (Paras 6,7)

Result: *Appeal Dismissed.*
