

HIGH COURT OF CHHATTISGARH, BILASPUR

SB: HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, J.

First Appeal No.115 of 2002

APPELLANT

Krishna Kumar

Versus

RESPONDENT

Mrs. Shashikala

Appearance:

For Appellant : Ms. Sarina Khan, Advocate.

For Respondent : Shri Narottam Lal Vishwakarma, Advocate.

Judgment on Board
(26-03-2015)

1. By this appeal, the Appellant has challenged the legality and propriety of the order dated 26.02.2002 passed by the Additional District Judge, Bemetara the then district Durg, Chhattisgarh in Civil Suit No.04-A of 2000 whereby and whereunder, the learned court below has dismissed the suit for dissolution of marriage by a decree of divorce, filed by the Appellant/ husband under section 13 of the Hindu Marriage Act, 1955 against his wife/ Respondent.

2. As per pleadings of the suit filed before the court below, both the Appellant and Respondent married on 21.09.1999 as per hindu rituals. Thereafter, till February, 1999 the Respondent lived with the Appellant and thereafter left the company of the Appellant. Till today she is residing with her parents. As per pleadings, for a period of one week the Respondent consummated marriage by following *darma* of the wife and thereafter she has changed her behaviour, started committing torture mentally, refused to consummate the marriage by intercourse. The

Respondent always used to tell the Appellant that he is unemployed living at the mercy of others and he is also made her beggar. As per pleadings made in the application, she refused to live with his mother-in-law and father-in-law. The Respondent also insisted the Appellant to live separately. She offered the Appellant to go along with her and live at her parents house. Likewise, the Respondent tortured him mentally and left his company on 15.02.1999. The efforts made by the Appellant for bringing the Respondent to live with him failed, which resulted in filing of the present suit. The Appellant prayed that marriage solemnized between the parties may be dissolved by a decree of divorce.

3. Before the Trial Court, the Respondent filed written statement opposing the pleadings of the Appellant and submitted that the Appellant himself left her at her parental house on account of first Holi festival. She admitted the pleadings mentioned in para 3 of the application that she followed the *Patni Dharma* and lived with the Appellant. As per the Respondent, she followed the *Patni Dharma* along with the Appellant for a period of one whole month. Thereafter, she was taken by the Appellant to her parents' house for Holi festival and thereafter again the Appellant took her together and after one month he again left her at her parental house and did not take her back. Since then she is living in her parents house with no option. The Respondent by filing the written statement prayed that the suit filed for dissolution of marriage be dismissed.

4. After providing opportunity of hearing to both the parties, the Court below has dismissed the suit for dissolution of marriage as the Appellant failed to prove the ground taken that after solemnization of marriage the Respondent treated the Appellant with cruelty.

5. I have heard learned counsel for the parties, perused the evidence available in the record and the judgment and decree of the trial Court.

6. Learned counsel for the Appellant would submit that only one month after marriage the Respondent left him and she never consummated the marriage and not taken proper care of his parents. She often used to quarrel with them. The evidence submitted on behalf of the Appellant goes to show that both were residing separately. She

was committing cruelty by not consummating marriage and also by mental torture. The trial court by not appreciating the evidence adduced on behalf of the Appellant wrongly held that the element of cruelty was not proved, whereas the Appellant duly proved the element of cruelty. He has not examined his father and mother before the trial Court as they were old aged persons and he does not want to put them in inconvenience for his own problem and for recording their statements. The Appellant on the basis of the evidence adduced before the trial Court proved that he was subjected to cruelty by the Respondent and even then the trial Court dismissed his suit. Learned counsel further submitted that this first appeal be allowed and the order and decree passed by trial court be set aside.

7. Learned counsel for the Respondent vehemently argued that the judgment passed by the trial Court is appropriate. The Appellant adduced the evidence contrary to his pleadings. As per pleadings of the Appellant in para 3, after the marriage till one week the Respondent followed the *Patni Dharma* and resided with the Appellant and thereafter the incident of torture, cruelty and other things were taken place. The trial Court rightly held that AW-3, Anil Kumar Chakradhari, being a maternal nephew of the Appellant, is an interested witness and he stated contradictory facts as compared to the Appellant before the trial Court. The trial Court rightly held that evidence of AW-2, Jyoti Gumbar is not in corroboration of the Appellant and other witnesses. Whatever torture or cruelty committed by the Respondent, some of the part may have seen by the father and mother of the Appellant, and the Appellant failed to

examine his father and mother, therefore the trial Court rightly held that Appellant's case is not proved. Learned counsel further submitted that as per para 17 of the impugned order initially in the reconciliation proceedings the Respondent refused to live with the Appellant and in latter conciliation proceedings the Respondent agreed to live with the Appellant but the Appellant refused to keep her with him. It goes to show that she was ready to live with the Appellant in the subsequent conciliation proceedings. The Respondent was subjected to torture and *marpeet*. She was left by the Appellant himself and the Appellant never tried for taking his wife along with him. She is residing along with her parents as the Appellant does not want to take her for consummating married life. Hence, learned counsel for the Respondent submitted that the judgment of the trial Court is appropriate and the appeal may be dismissed.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced and the pleadings made by both the parties before the trial court.

9. On minute scrutiny, it appears that as per pleadings of the Appellant till one week after the marriage the Respondent lived with the Appellant by performing the *Patni Dharma*. This pleading has to be assessed on the basis of the entire application filed under Section 13 of the Hindu Marriage Act. In the entire pleadings, the Appellant has stated that the Respondent lived with him for one month, her behavior was not proper with him after 7 days of the marriage and she started mental

torturing. She he used to give food to her father by throwing. The Appellant also stated that the Respondent never became ready for marital relation. On going through the pleadings and the evidence, it is clear that the statement is contradictory with the pleadings and as per the contents of the para 3 of the application it may be held that for 7 days the Respondent performed the *Patni Dharma* and she consummated marriage for 7 days and thereafter she was denying for the marital relations. No explanation has been offered for the said contradiction goes to show that the Appellant tried to improve his statement before the trial Court against his pleadings and the same cannot be accepted.

10. In the present case, only the charge for cruelty is tried by framing an issue which is under Section 13 sub-Section (1) (ia) of the Hindu Marriage Act. Though as per the pleadings alleged, the Respondent deserted the Appellant immediately after one month of the marriage but for the same no issue has been framed by the trial Court. The Appellant also not prayed before the trial Court to frame an issue under Section 13 sub-Section (1) (ib) of the Hindu Marriage Act and for that the Appellant has not shown any sufficient cause. The scope and jurisdiction of the appellate court is also limited for the issue of cruelty only. For the alleged factum of desertion, the evidence adduced on that behalf is of no help to anybody for adjudication in the present appeal as there is no issue for desertion.

11. Before the Trial court, the Respondent also examined herself. As per the Respondent, the Appellant used to commit *marpeet* and thereafter she was taken to her parents' house. Though the appellant

came twice to meet her, but thereafter he never came to take her with him. As per the Respondent's evidence at para 1, she wants to go with the Appellant but the Appellant gave her threat to kill and also he never came to take her back.

12. As per NAW-2 Bharat Kumar Chakravarty, the Respondent told him that her husband used to beat her and he left her after three months of marriage. Presently, the Respondent is living with them along with her mother. This witness is a nephew of the Respondent and as per his evidence, the family members want to send the Respondent with the Appellant.

13. The Appellant examined himself along with AW2-Jyoti Gumber and his maternal nephew AW-3, Anil Kumar Chakradhari. The trial Court elaborately discussed the entire evidence and held that as the Appellant deposed against his pleadings and as such the fact remained unproved that the Respondent refused to consummate marriage with him. In an entire descriptive assessment the trial Court held that the evidence of AW-3 Anil Kumar Chakradhari is contrary to the statement of the Appellant and as he is maternal nephew his statement may not be held truthful and acceptable. For the evidence of AW-2, Jyoti Gumber, the trial Court held that as per this witness at para 7 the Appellant never informed her regarding physical relations between him and the Respondent which is in contrary to the statement of the Appellant. The trial Court rightly held that the statement of the Appellant and AW-2, Jyoti Gumber is contradictory with each other for the material facts. There was no proper and acceptable reason for non-examination of father and mother. It is not

the case that father and mother are aged and that they were unable to attend the court for the purpose of giving evidence. As per application, the Appellant was 28 years of age at the time of incident. One can very well be presumed regarding the age of father and mother. No evidence regarding ailment was furnished. At the time of trial the Appellant does not want to put his father and mother in his personal affair. Hence, the trial Court has rightly held that non-examination of the father and mother affects the roots of the case. The trial Court rightly held that there may be something between husband and wife, which may be some dispute or quarrel but all those cannot be put to the category of cruelty and the same is required to prove by satisfactory evidence. The trial Court held that element of cruelty is not proved. The contradictory facts and pleadings in the court statement regarding consummation of marriage affects the fate of the case adversely and the other evidence adduced was not up to the mark. In view of this, the trial Court rightly disbelieved the evidence of the Appellant.

14. In view of above, the trial Court by appreciating entire evidence rightly held that the factum of cruelty is not proved and as such dismissed the suit filed by the Appellant. There is no scope for interference in the order and decree passed by the trial Court.

15. Consequently, the appeal filed by the Appellant being devoid of merit is liable to be dismissed and is hereby dismissed.

16 No order as to cost(s).

JUDGE

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