

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 6 of 2013

1. Mahendra Prasad Mahto S/o Shrawan Kumar Mahto Aged About 53 years R/O A-14/72 Ambuja Colony, Rawan, P.S. And Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara (C.G.)

---- Petitioner

Versus

1. Smt.Babita Devi Mahto W/o Mahendra Prasad Mahto Aged About 32 Years Thru- Bhojram Verma, Kirana Stores, Main Road Rawan, Tah. & Dist. Baloda Bazar (C.G.), At Pres. Thru- Santosh Choubey, R/O & Post Sarda,dist. Damoh Mp

---- Respondent

For Petitioners : Shri CR Sahu, Advocate and Shri CK Sahu, Advocate.
For Respondent No. None for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board

03/03/2015

By this appeal under Section 28 of the Hindu Marriage Act, the appellant has challenged the legality and propriety of judgment and decree dated 06.11.2012 passed by First Additional District Judge, Baloda Bazar, Distt. Raipur in Civil Suit (H.M.A.) No.51A/11, whereby and whereunder the learned trial Court dismissed the suit filed by the appellant under Section 13 of the Hindu Marriage Act on the ground that the appellant has failed to prove his case.

2. Brief facts of the civil suit filed by the appellant before the Court below are that the marriage of the parties was solemnized in the year 1997 according to Hindu rituals. A daughter was born out of their wedlock. It is alleged that the respondent has illicit relation with her neighbour. The appellant tried to make her understand but she continued her relation with the neighbour. On 24.4.2011, the respondent left her matrimonial house and thereafter remained untraceable. Being failed to contact, the appellant filed a suit before the Court concerned for dissolution of marriage by a decree of divorce.

3. The respondent remained ex-parte before the Court below. The trial Court proceeded ex-parte against the respondent and conducted the trial. In order to prove his case, the appellant adduced evidence by way of affidavit under Order 18 rule 4 of the CPC of himself and another witness Janak Ram Sahu.

4. After hearing parties available before the trial Court, the trial Court has dismissed the suit as the appellant has failed to adduce evidence to prove his case and also as the appellant expressly failed to prove the period of desertion and that the non-applicant had made any illicit relation with another person.

5. The appellant has challenged the legality and propriety of the judgment impugned by filing this appeal and prayed that the trial Court has failed to appreciate the evidence as the appellant proved that the respondent is living in adultery since 24.4.2011. It is further alleged that the trial Court has failed to exercise its jurisdiction vested in it by law in its right perspective. Hence, judgment and decree of the trial Court may be set aside.

6. The respondent remained unserved in the present appeal.

7. I have heard the parties present before the Court and perused the judgment and decree of the trial Court.

8. Learned counsel appearing on behalf of the appellant vehemently argued that there is already evidence on oath regarding the date from which the respondent is living in adultery and regarding other facts. Hence, while supporting the memorandum of appeal, he prayed that the appeal may be allowed and the judgment passed by the trial Court may be set aside.

9. In order to appreciate the arguments advanced on behalf of the appellant, I have perused the evidence adduced by the appellant before the trial Court.

10. On perusal of the records, it appears that burden is upon the appellant to prove his case before the trial Court. To prove the factum of adultery and other facts it requires specific evidence appears to be credible and admissible. While perusing the evidence under Order 18

Rule 4 of the CPC, it appears that there is no clear evidence corroborated by the relevant documentary evidence adduced on behalf of the appellant regarding his pleading. The trial Court, in absence of any proper evidence to prove his case, dismissed the suit of the appellant. The documentary evidence, i.e. information of noncognizable offence to the police and other evidence, though filed along with list of documents before the trial Court but the same is not admitted in the evidence, so that they may be read in the evidence while assessing the case of the appellant.

11. The appellant has not adduced complete and proper evidence to corroborate his pleading and also the pleadings are not specific regarding adultery. In a matrimonial case like this, it would be appropriate that an opportunity be given to the appellant to amend his pleadings and to adduce necessary evidence before the trial Court and attempt is also made to serve the notice to the respondent in her present address and after giving notice award her proper opportunity to file her reply and adduce her evidence, if any, then it would be appropriate for the trial Court to pass the order afresh.

12. Accordingly, the appeal is allowed. The judgment and decree dated 06.11.12 is hereby set aside. The case is remanded to the trial Court. The appellant is required to remain present before the trial Court in person or through his counsel on **30.3.2015**. The trial Court is directed to provide opportunity to the parties regarding to amend their pleadings or to file written response if any. If the appellant wishes to find out the correct present address and to make service over the respondent if possible under the law and thereafter to provide opportunity to both the parties to adduce evidence and thereafter to pass order afresh.

13. With this direction, the appeal is allowed. The case is remanded to the trial Court for denovo trial . No order as to cost.

Sd/
JUDGE