

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 26 of 2016

1. Jageshwar Prasad Devangan S/o. Khemlal, aged about 37 years, Caste Koshta, R/o. Village Khamhiya, Police Station Baradwar, Tahsil Champa, District Janjgir-Champa (Chhattisgarh).....(Applicant)

---- Appellant

Versus

1. Smt. Kunti Bai W/o. Jageshwar Prasad Devangan, aged about 45 years, Caste Koshta, R/o. Village Bilaigarh, Police Station and Tahsil Bilaigarh, District Balodabazar-Bhatapara (Chhattisgarh)..... (Non- Applicant)

---- Respondent

For Appellant – Ms. Savita Tiwari, Advocate.

For Respondent – Mr. K.K.Dewangan, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board by Prashant Kumar Mishra, J.

04/08/2016

1. This appeal under Section 19 of the Family Court Act is barred by 27 days.
2. Learned counsel for the respondent/wife would not object to the prayer made in I.A.No.1 for condonation of delay.
3. In view of above, I.A.No.1 is allowed and the delay of 27 days in filing the appeal is condoned.
4. The trial Court has rejected the application filed by the appellant/husband under Section 13(1) of the Hindu Marriage Act, 1955 for grant of divorce on the ground that the respondent/wife has deserted him.
5. Facts of the case, in brief, are that parties were married in the year 2002. On account of dispute between them, the respondent/wife is residing

in her parental house w.e.f. 22-06-2008. Despite repeated efforts made by the appellant, the respondent/wife refused to join his company in her matrimonial house and perform the duties of wife, therefore, she has deserted the company for which a decree for divorce should be granted.

6. The respondent/wife resisted the suit on the plea that the appellant was ill treating her by demanding dowry in form of motorcycle and gold. When she was pregnant, the appellant did not take care of her and left her at her parental house. When the child was born, he did not attend the respondent or the newly born baby. Despite lapse of 10 months, the appellant did not take care of her, therefore, her parents made arrangements and persuaded her to go back to her matrimonial house. When she stayed in her marital house for about six months the appellant did not attend her properly; he was using a separate bedroom and was not having food served by her. On one day, the appellant tried to gag her and expelled her from the house, on which she telephoned her parents and thereafter went back to her parental house.

7. Both the parties have led oral evidence to prove their respective cases. They have also examined the villagers who attended the panchayat meeting convened by one or the other party.

8. On appreciation of the entire material which are in the shape of oral evidence, the trial Court concluded that the respondent/wife is living separately for just and proper cause and that she had sufficient reason to not to join the company of the appellant because his conduct and behaviour towards her was not proper.

9. On behalf of the appellant, it is argued that the respondent/wife has never lodged any first information report alleging cruelty or ill-treatment by

the appellant, therefore, the entire evidence is afterthought only for defending herself in the suit which has wrongly been rejected by the family court.

10. Per contra, learned counsel for the respondent/wife argued that the respondent as well her witnesses have duly proved that the appellant was ill-treating the respondent/wife, therefore, she had no other option but to leave her matrimonial house.

11. We have perused the impugned judgment.

12. Learned counsel for the appellant would read the statement of witnesses to convince the Court that finding suffers from perversity.

13. Having heard learned counsel for the parties and considering the entire facts we do not find that this is a case where the respondent/wife has left the company of the appellant without any justifiable cause. It is a case of oath against oath wherein the burden to prove lies heavily on the plaintiff/appellant. It does not appear that while appreciating the evidence, the trial Court has misdirected itself and has concluded to record such findings which are not born out from the evidence. On the one side, the appellant and his witnesses have deposed to make out a case that the appellant was making stringent efforts to bring back the wife/respondent, whereas on the other side, the respondent/wife and her witnesses have proved that the respondent was living separately because of ill-treatment by the appellant. The trial Court has specifically referred to the statement of Atmaram (PW-2) . This witness, examined by the respondent/wife, had gone along with other villagers to the house of the appellant for leaving the respondent in his house. He says that when they reached the house of the appellant, having seen the villagers at their door, the appellant and his family members closed the door and refused them entry in the house. When they contacted the villagers of the village where the appellant resides and

again came back to the appellant's house and tried to convince the family members of the appellant, they refused to allow the entry to the respondent, therefore, they alongwith the respondent/wife had to go back to their village. Similarly, Laxmi Prasad (PW-3) is also a witness who speaks about the conduct and behaviour of the appellant and his family members.

14. Despite giving anxious thought and consideration to the evidence to examine as to whether there is any perversity, we have not found any such defect in the approach of the trial Court while recording the finding.

15. For the foregoing reasons, the judgment passed by the family court does not suffer from any infirmity. Therefore, the appeal being bereft of merit, deserves to be dismissed and the same is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Chandra Bhushan Bajpai)
Judge