

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 83 of 2016**

- Anjali Gupta W/o Om Babu Gupta, Aged About 24 Years D/o Shri Ram Swarup Gupta Luktara Wale, Occupation- House Work, R/o Balkhandi Naka, Karaiyakuwa Ki Gali, Banda, Tah. & Distt.- Banda (U.P.) (Non-Applicant)

---- Appellant**Versus**

- Ombabu Gupta S/o Shri Rambabu Gupta, Aged About 28 Years Occupation- Service (Jindal Power Ltd. Tamnar), R/o Urjanagar Colony, Tamnar, Distt.- Raigarh, Chhattisgarh, Permanent R/o Chhoti Bazar, Banda, Distt.- Banda, Chhattisgarh(Applicant)

---- Respondent

For Appellant : Shri Amit Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board**15/07/2016**

1. The appellant is aggrieved by the order passed by the Family Court, rejecting her application under Order 7 Rule 11 CPC.
2. The non-applicant/husband has preferred a suit for obtaining decree of divorce on the ground of cruelty.
3. In the application preferred by the appellant under Order 7 Rule 11 CPC, it is stated that as per plaint averment both the parties have resided till 7-4-15 and the suit for divorce has been presented after 5 days i.e. on 13-4-15, therefore, it is premature.

4. In course of argument it is urged that for obtaining a decree on the ground of desertion, the plaintiff has to plead that the parties are not residing together for the last two years and the desertion is without any reasonable or justifiable cause, however, the suit has been preferred before the expiry of period of two years from the date of desertion i.e. from 7-4-15.
5. A reading of the averments contained in the plaint would clearly establish that the decree is sought on the ground of cruelty; the petitioner/wife not being mentally fit; the marriage has not consummated etc. and not on the ground of desertion.
6. In course of hearing it could not be pointed out by the learned counsel as to under which clause of Order 7 Rule 11 CPC the plaint deserves to be rejected.
7. For all the aforesaid reasons, we do not find that the suit is barred by any law or the plaint is otherwise required to be rejected.
8. Accordingly, the appeal has no substance, it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Chandra Bhushan Bajpai

Ashu