

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 111 of 2013**

1. Smt. Nandani Khatri @ Laxmi Khatri, W/o Harish Khatri, aged about 27 years, C/o Basudev Bajaj @ Raju Bajaj, Radio Center, Kera Road, Naila (Janjgir), Tahsil and District Janjgir-Champa (C.G.)

---- Applicant (Defendant)**Versus**

1. Harish Khatri S/o Khem Chandra Khatri, aged about 30 years, R/o Sindhi Colony, Chakardharnagar, Raigarh, Present resident Sanjay Nagar, Tahsil and District Raigarh (CG)

---- Respondent (Plaintiff)

For Applicant:
For Respondent:

Mrs. M. Asha, Advocate.
Miss Sharmila Singhai, Advocate with
Mrs. Reena Singh, Advocate

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice C.B. Bajpai****Order On Board****Pritinker Diwaker, J;****26/07/2016**

1. This appeal is directed against the order dated 12.11.2013 passed by the Judge, Family Court, Raigarh in Civil Suit No.82-A/2013 allowing the application filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (henceforth "the Act of 1955") against the applicant-wife by granting decree of restitution of conjugal rights in favour of respondent.
2. Brief facts of the case are that the marriage between the applicant and the respondent was solemnized on 12.12.2009 at Raigarh as per Hindu rites

and customs and out of their wedlock one male child was born on 11.3.2012 who is said to have living with the applicant herein. On 9.10.2012 the applicant-wife lodged report against the respondent & his family members alleging that they are harassing her for dowry. Based on this report, offence under Sections 498A, 506B & 34 of the Indian Penal Code was registered against the respondent & his family members, which is still pending consideration. In the year 2012 the respondent-husband filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights, however, during the pendency of this application the parties have entered into a compromise vide Annexure A-3 under which the respondent-husband agreed to keep the applicant-wife nicely and that he will not commit cruelty upon her for demand of dowry or any other reason. Pursuant to this agreement, on 9.4.2013 the applicant came back to her matrimonial home but after some time the respondent again started ill-treating her for demand of dowry etc. and therefore she left the company of the respondent on 22.4.2013 and thereafter on 23.4.2013 lodged report against him vide Annexure A-4. On 2.5.2013 the applicant has also filed an application before the Family Court, Raigarh praying that since the respondent violated the conditions of agreement dated 4.4.2013, appropriate action may be taken against him.

On 22.5.2013 the respondent moved an application under Section 97 Cr.P.C. before the Executive Magistrate, Raigarh which was disposed of in terms of the statement of applicant recorded on 12.6.2013 wherein she has admitted that she is living with her parents of her own. Subsequently, on 24.8.2013 the respondent again filed a petition under Section 9 of the Act, 1955 for restitution of conjugal rights on the ground that the applicant has without reasonable excuse withdrawn from his society. The applicant

opposed the said application. Her main defence was that as her husband was cruel to her, therefore, she had to left her matrimonial house. In support of the pleas, the applicant examined herself and one witness namely Vasudev Bajaj and the respondent had also examined himself and one witness namely Sheetal Das Talreja.

3. The trial Judge vide order impugned decreed the suit of the respondent and held that there existed no reasonable excuses for the applicant to withdraw from the society of respondent husband and the respondent is entitled to a decree prayed for him. It is this order which has been challenged by the applicant in this appeal.
4. Counsel for the applicant submits that:-
 - in earlier round of litigation when the respondent had filed application under Section 9 of the Act of 1955, a compromise arrived at between the applicant and the respondent on 4.4.2013 wherein it was agreed that the respondent will keep the applicant properly, however, the applicant could live with the respondent only for a few days because the respondent again started treating her with cruelty for demand of dowry etc. and therefore she has left her matrimonial home and started living with her parents. Thus, there is sufficient and reasonable cause in favour of the applicant to justify her withdrawal from the matrimonial society of the respondent husband.
 - as a dowry case is pending against the respondent, therefore somehow he wants the company of applicant in order to get rid of the criminal case registered against him on the report of applicant.
5. On the other hand, supporting the impugned order it has been argued by counsel for the respondent that allegation of cruelty is false and baseless and the applicant is living separately without just cause. He further submits

that the trial Court considering that the applicant has, without reasonable excuse, withdrawn from the society of respondent, granted a decree of restitution of conjugal rights in his favour which does not call for any interference.

6. We have heard counsel for the parties and perused the impugned order and records of the Court below.
7. It is settled position of law that reasonable excuse to stay away from the company of the other spouse is sufficient to satisfy Section 9 of the Act, 1955. Treating the wife with cruelty within the meaning of the Act, 1955 amounts to reasonable excuse and is sufficient for justifying the wife to keep away from the husband. At the same, the Court is also required to see the conduct of the parties and where it is found that conduct of husband created reasonable apprehension in mind of wife that it would be unsafe for her not to stay with husband, the decree for restitution of conjugal rights in favour of husband cannot be granted.
8. In the present case, admittedly the petition filed by the respondent for restitution of conjugal rights was decided in terms of agreement arrived at between the applicant and the respondent whereunder the respondent undertook that he would not commit torture and cruelty upon the applicant. Accordingly, the petition for restitution of conjugal right has been disposed of. Record further goes to show that just after some days of this reunion, the applicant has withdrawn herself from the society of the respondent on the ground that her husband was cruel to her and that she had an apprehension in her mind that it will be harmful and injurious for her to live with him. Thereafter she lodged a report at the police station on 23.4.2013 and also filed an application before the family Court on 2.5.2013 for taking appropriate action against the respondent for violating the terms of

agreement. Respondent again filed petition under Section 9 of the Act, 1995 for restitution of conjugal rights on the ground that the applicant is living separately without just cause. The applicant opposed the petition by filing reply. Her main defence was that she is living separately from the respondent for a just cause. The trial Court allowed the respondent's application and granted a decree of restitution of conjugal rights in his favour.

9. On going through the evidence on record, we find that though there is no independent witness regarding applicant-wife's maltreatment and subjection to cruelty at her matrimonial home, but the applicant remained consistent in her stand that she was being treated with cruelty by the respondent. Version of the applicant-wife that she was subjected to cruelty beyond her tolerance compelling her to withdraw from the society of her husband appears to be probable one and further gets support from FIR dated 9.10.2012 & 23.4.2013 and application dated 2.5.2013 filed before the court below concerned for taking appropriate action against the respondent for violating the terms of agreement dated 4.4.2013. This apart, initial burden to prove the pleadings is on the person who comes to the Court seeking relief and in the present case it is the respondent-husband who has sought restitution of conjugal rights, however, the material brought on record by him do not substantiate his case that the applicant is living separately without just cause. In such circumstances, the applicant's evidence appeals to the conscience of this Court whereas the respondent's stand that she went away without reason, does not. That being so, the applicant-wife had more than reasonable excuse for withdrawing from the society of respondent-husband and she cannot be compelled to live with her husband against her wishes. Thus, the decree of

restitution of conjugal rights granted in favour of the respondent by the trial Court seems to be erroneous.

10. In the result, the appeal is allowed and the impugned order dated 12.11.2013 passed by the Family Court below is hereby set aside.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-