

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 158 of 2017**

(Arising out of judgment and decree dated 5.8.2017 passed by learned Judge, Family Court, Manendragarh, District Koriya in Civil Suit No.21A/2014)

- Muneshwar Pal S/o Shital Pal, Aged About 39 Years, Cast Gaderi, R/o Behind Ajanta Poultry Farm, Post Nagpur, Village Sarbhoka, P. S. Podi, Tahsil Manendragarh District Koriya Chhattisgarh.

---- **Petitioner****Versus**

- Smt. Rajkumari Pal W/o Muneshwar Pal R/o Village Harra, Tahsil Manendragarh District Koriya Chhattisgarh.

---- **Respondent**

 For Appellant

 Mr. Nishi Kant Sinha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By**Prashant Kumar Mishra, J.****30/8/2017**

1. Heard.
2. The appellant is aggrieved by the Family Court's decree, whereby, his application under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (in short "the Act, 1955"), for grant of divorce on the ground of cruelty has been dismissed.
3. The suit was filed on pleadings that the parties were married

about 18 years back and have 5 children out of the wedlock; the wife is quarrelsome and raises quarrel every now and then without any reason or justification, which is causing great mental cruelty to the husband. In addition, it is also pleaded that she was not taking care of the children and has left the company of the husband about 7 years back. She has also lodged a report on 20.07.2011 and has moved an application for maintenance even though the appellant was ready to keep her in the marital home.

4. The respondent-wife denied the suit allegations and pleaded that the appellant has illicit relations with his own maternal aunt Sunita Pal, who is residing with him as his wife and both have one issue out of the said relation, therefore, it is not possible for her to live in the appellant's company. She also alleged that the appellant and his maternal aunt Sunita Pal used to torture and commit cruelty on her.
5. While the appellant has examined 4 witnesses in support of his plea, the respondent-wife has examined 5 witnesses in her support.
6. Bare reading of the trial Court's finding available at para 15 to 18 would reveal that the appellant has entered his maternal aunt's name i.e. Sunita Pal as his wife in his service record. Moreover, the School Dakhil Kharij Register of Monika Pal, the appellant's daughter from Sunita Pal, has also been produced by the school authorities, wherein, the appellant is named as father of Monika Pal and Sunita Pal is named as her mother,

meaning thereby, there is clear finding duly supported by documentary evidence that the appellant has one daughter from his relation with his maternal aunt Sunita Pal. Further, in the voter list of the concerned constituency also, Sunita Pal's name is entered as the appellant's wife and both are shown to be residing at one address.

7. In the teeth of the above findings, the respondent's withdrawal from the company of the appellant is fully justified and is not without any reasonable cause.
8. Once the husband starts residing and having relation with another lady, he cannot expect from his legally married wife that she should reside with him under the same roof where another lady is also living in the company of her husband.
9. In so far as the appellant's allegation of cruelty committed by the respondent is concerned, there is absolutely no evidence which may amount to cruelty as a marital offence so as to furnish a ground under Section 13(1) (ia) of the Act, 1955 for dissolution of marriage.
10. Difference in temperament or in behaviour of the husband and wife, does not amount to cruelty. Law needs some grave form of dispute or such conduct of the spouse which makes the life miserable or unbearable for the other spouse to be called commission of cruelty. There is no such evidence available in the case, which fits in the definition of "cruelty" as has been illustrated by the Supreme Court, though the list is not

exhaustive, in the matter of **Samar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511.**

11. Mr. Sinha, learned counsel for the appellant, has vehemently argued that the evidence available in the case definitely proves the ground of cruelty and the appellant is entitled for a decree of divorce, which has been wrongly been denied to him by the Family Court.

12. We have given anxious consideration to the arguments raised by learned counsel for the appellant. However, we have not found any perversity in marshalling the evidence or applying the oral and documentary evidence to record the findings against the appellant.

13. It is not a case of oath against oath, but in addition to that, the respondent-wife has submitted documentary evidence to prove the appellant's relationship with her own maternal aunt Sunita Pal. Therefore, the trial Court's finding does not suffer from any illegality or perversity.

14. For the foregoing, the appeal deserves to be and is dismissed at the admission stage itself.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Arvind Singh Chandel)