

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 153 of 2016**

- Jairam Singh, S/o Kamalbhan Singh Pawar, aged about 46 years, through, R/o Near Rajesh Mandavi Auto Repair Shop, Utai, Thana- Utal, Tahsil & District- Durg (C.G.). present address- Front of Agrawal Rice Mill, Millpara, Utai, Thana- Utai, Tahsil & District-Durg (C.G.).

**---- Appellant****Versus**

- Smt. Mamta Singh, W/o Jairam Singh Pawar, aged about 39 years, R/o Q.No. 10-A, Sector-7, Street No. 22, Thana- Sector-6 Kotwali, Bhilai, Distt. Durg (C.G.).

**---- Respondents**


---

|                 |   |                               |
|-----------------|---|-------------------------------|
| For Appellant   | : | Mr. Shrawan Agrawal, Advocate |
| For Respondents | : | Mr. M.P.S. Bhatiya, Advocate  |

---

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

**Order On Board By**  
**Justice Prashant Kumar Mishra**

**05/09/2017**

1. The appellant is aggrieved by the Family Court's decree, whereby his prayer for grant of divorce on the ground of desertion under Section 13 (1) (ib) of the Hindu Marriage Act, 1955 (henceforth 'the Act') has been dismissed.
2. The suit was filed on the submissions that the parties were married on 13/02/1997 at Raipur and resided together for about 2 years at Sector-6, Bhilai. They have a daughter namely-Ms. Komal born out of their

wedlock. According to the husband, during their stay at sector-6, Bhilai and when he was on duty, the respondent went to her parental house in the year 1999 without informing him and despite repeated requests and persuasion, she refused to join his company. It was pleaded that she is residing separately without any lawful reason and has deprived the appellant from his conjugal rights and thus voluntarily deserted his company, therefore, their marriage may be dissolved by a decree of divorce.

3. The respondent-wife denied the plaint allegations and stated that the appellant was regularly treating her with cruelty by beating her in a state of intoxication. He used to suspect her character. When they were residing at sector-6, Bhilai, the appellant had tried to electrocute her by the current from Heater. It was further pleaded that the appellant used to lock the door from outside during office hours so that she can not move out of the house.
4. The appellant examined himself and his brother- Bhupendra as P.W.2 in support of his plea, whereas the respondent examined herself as a witness.
5. Based on the submissions made by both the parties, the trial Court has found the respondent's statement more truthful, reliable and convincing and thus the trial Court recorded a finding that it was the appellant who was treating the wife with cruelty, therefore, her separate residence was justified.
6. Time and again, the Supreme Court has reiterated the principle as to

what is the meaning of word “desertion”. In the celebrated case of ***Bipin Chander -Vs- Prabhawati, AIR 1957 SC 176***, the Supreme Court has quoted the Halsbury law of England which has given the following meaning of desertion:-

*“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle to all cases.*

*Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, the home;. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated”.*

7. Having heard learned counsel for the parties and on perusal of the record, it would appear that in appellant's evidence, neither the appellant nor his brother would state the date, time or year when effort was made to bring back his wife. It is also not stated by the appellant as to what was the exact reason for the respondent leaving the matrimonial house.
8. Per contra, the respondent has made categorically submission that the appellant used to torture and assault her in a state of intoxication. When suggestion was made to her that she was suffering from sickling, therefore, she was weak, she denied that she used to remain unwell for sickling and would further state of her own that she felt ill

when the appellant had once pushed her down the stairs. She would further depose that the appellant used to keep her in the marital house for about a week and then she would be dragged of his house after giving beating by the appellant.

9. When the evidence is considered in its true perspective, it would appear that the wife's statement is more truthful and believable. The trial Court has not recorded any such finding which would appear to be perverse on the basis of material available on record. For constituting desertion, the wife has to abandon the matrimonial home and the company of the husband without any just or lawful reason with an intent to permanently sever the relationship.
10. In the case at hand, her living separate is on account of reason for which the appellant is responsible. Her separate residence is not voluntarily with an intent to put at end to the marital relation, therefore, the required ingredients of *animus deserendi* is neither available nor proved by the appellant.
11. For the foregoing, the appeal has no substance, it deserves to be and is hereby dismissed.

Sd/-  
**Judge**  
**Prashant Kumar Mishra**

Sd/-  
**Judge**  
**Arvind Singh Chandel**