

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 112 of 2014**

- Urmila Meshram W/o Shripal Meshram Aged About 38 Years R/o Amitabh Shrivastav Advocates House, Basantpur, Ward No. 38, Rajnandgaon, Tah. And Distt. Rajnandgaon C.G.

---- Petitioner**Versus**

- Shripal Meshram S/o Ramprasad Meshram Aged About 40 Years R/o Dhangaon, P.O. Kumurda, Tah. Churiya, Distt. Rajnandgaon C.G.

---- Respondent

For Petitioner

Shri Rakesh Thakur, Advocate

For Respondent

Ms. Ranjana Singh Tomar, Adv. on behalf
of Ms. Meena Shastri, Advocate**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board by Prashant Kumar Mishra, J.****07/07/2017**

1. Appellant/wife would assail the impugned judgment allowing the respondent/husband's application under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') to dissolve their marriage.
2. The parties were married in the month of February, 2004. While the appellant/wife is employed as Shiksha Karmi Grade III, the

respondent/husband is working as Constable in the 8th Battalion, SAF, Rajnandgaon (Chhattisgarh). Prayer for decree of divorce was made on the ground of cruelty, the details of which have been narrated in the plaint as well as in the affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 (for short 'the CPC') of the husband.

3. Since after hearing the learned counsel for the parties and on perusal of the pleadings, deposition and the impugned judgment, we intend to remit the matter back to the trial Court for rendering fresh judgment on the basis of material available on record. We are not advertent to the details of allegations nor we intend to record even *prima facie* finding about the case of one or the other party because it may effect the mind of the trial Court when the matter is considered afresh for rendering judgment.
4. We formed opinion for remitting the matter back only on the ground that despite the parties having contested the case and examined their witnesses, the trial Court has only reiterated the statements of witnesses made in the affidavit under Order 18 Rule 4 of the CPC or in their respective pleadings, however, finding in respect of commission of cruelty by the wife and the discussion which should precede the said finding is not at all available in the judgment.

5. We have also found that the impugned judgment runs into 58 paragraphs, however, in most of the paragraphs, the learned trial Judge referred to the pleadings of the contents of the affidavit under Order 18 Rule 4 of the CPC and there is no independent appreciation of evidence so that we may consider as to whether the appreciation of evidence is borne out from the record of the case and the findings are not perverse.
6. Moreover, the trial Court has not recorded a categorical finding of commission of cruelty by the appellant/wife and appears to have rendered the decree on the ground of irretrievable breakdown of the marriage though such ground is not enumerated as one of the ground on which decree of divorce can be sought under Section 13 of the Act, 1955.
7. In some cases the Supreme Court has granted decree of divorce on the ground of irretrievable breakdown of a marriage, however, in those cases the Supreme Court has exercised the extraordinary power under Article 142 of the Constitution of India.
8. In view of the above, we are of the considered opinion that the impugned judgment deserves to be and is hereby set aside. The trial Court is directed to deliver the judgment afresh on the basis of pleadings and evidence available on record by recording specific

finding on the grounds urged in the plaint. The parties shall appear before the trial Court on **1st August, 2017**. Record of the trial Court be sent back forthwith.

9. In the result, the appeal is allowed to the extent indicated above.

Sd/-

Sd/-

Judge
Prashant Kumar Mishra

Judge
Arvind Singh Chandel

Gowri