

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 239 of 2016

- Deendayal Banjare S/o Shri Chaturam Banjare, Aged About 33 Years Caste Satnami, R/o Village Sukuldaihan, Tahsil And District Rajnandgaon, Chhattisgarh(Plaintiff)

---- Petitioner

Versus

- Smt. Sukreta W/o Deendayal Banjare, Aged About 29 Years, R/o Village Sukuldaihan, Tahsil And District Rajnandgaon, Chhattisgarh, At Present R/o Khamtarai, Sahid Nagar, Tahsil And District Raipur, Chhattisgarh(Defendant)

---- Respondent

For Appellant
For Respondent

Shri Parag Kotecha, Advocate
Shri Kshitij Sharma, Advocate

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

Order On Board by Prashant Kumar Mishra J.

03/08/2017

1. The appellant is aggrieved by the said part of the impugned judgment, whereby the Family Court, while allowing the appellant's prayer for grant of divorce, has directed him to pay permanent alimony of Rs. 50,000/- to the respondent wife.
2. The respondent wife has also filed cross objection seeking enhancement of the amount of permanent alimony by way

of one time measure. An application seeking condonation of delay in filing the cross objection has also been filed, however, on perusal of the order sheets, it would appear that the appeal is yet to be admitted, therefore, in our view, the cross objection is not barred by limitation, as the respondent was never issued any notice for hearing i.e. final hearing of the appeal after its admission. In the said view of the matter, we have proceeded to hear the parties on admission as well as on cross objection.

3. We are not referring to the ground on which the divorce was sought, because there is no challenge to the decree of divorce. We confine this order to the adequacy or otherwise of the amount of permanent alimony granted to the wife by way of one time measure.
4. While the appellant would submit that even if the appellant is found to be working as *Raj Mistri*, there being no evidence on record that he is earning handsomely from such vocation, the permanent alimony of Rs.50,000/- allowed to the wife is exorbitant. On the other hand, the respondent wife would submit that at present, all *Raj Mistri* earn atleast Rs. 400/- per day as wages, therefore, the appellant earns at least 12,000/- per month and as such, the amount of Rs.50,000/- is not adequate enough for sustenance of the respondent considering the income of the appellant and

social strata to which the parties belong.

5. We have heard learned counsel for the parties and perused the impugned judgment and the record of the trial Court.
6. There is categorical finding by the trial Court that the appellant is working as *Raj Mistri*. Moreover, in para 16 of his cross examination, the appellant has admitted that they are three brothers living jointly without there being any partition of the land belonging to the family. According to him, one of his brother is an agriculturist and the other one is a driver. It would thus appear that the appellant is not so poor that he cannot pay Rs. 50,000/- to the respondent wife by way of one time permanent alimony. In addition, on a reading of para 13 of the cross objection of the respondent wife, it appears, the appellant's counsel has put suggestion on which the respondent wife stated that she has seen the appellant going to Dongargarh, Rajnandgoan and several other places in connection with his job as *Raj Mistri*.
7. If we examine the evidence adduced by the respondent wife, we find that there is no proof submitted by her that the appellant is engaged in contractorship (*Thekedari*), which was her case in reply filed before the Family Court.
8. From the evidence available on record, we are fully satisfied that the finding recorded by the Family Court that the

appellant works as *Raj Mistri* is fully borne out from the record, therefore, treating his average monthly income as Rs.9000/-, the Family Court has not committed any illegality or perversity by allowing one time permanent alimony of Rs. 50,000/- in favour of the respondent wife. Since we have found this amount to be adequate for the present, the cross objection filed by the respondent also deserves to be dismissed.

9. For the foregoing, the appeal as well as the cross objection are without any substance, therefore, it deserves to be and is hereby dismissed.
10. Needless to say, in the event of any variance in the income of the appellant, the respondent wife would be at liberty to seek enhancement of the amount, in accordance with law.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel