

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 82 of 2015**

(Arising out of judgment and decree dated 8-5-2015 passed by the Judge, Family Court, Dhamtari, in civil suit No.65-A/2014)

1. Smt. Kamini Hirwani W/o Nitin Kumar Aged About 34 Years R/o H.I.G. 34, Colony Housing Board, Hatkeshar, Dhamtari, Tahsil & District-Dhamtari C.G. At Present Residing At Sahaspur Lohara, District-Kabirdham, Chhattisgarh

---- Appellant

Versus

1. Nitin Hirwani S/o Muktanand Hirwani Aged About 33 Years R/o Gali No. 1, Ward No. 17, Mamta Nagar, Rajnandgaon, Tahsil & District- Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant	Shri Abhishek Sharma, Advocate
For Respondent	Shri Sameer Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

By

Prashant Kumar Mishra, J.

25/09/2017

1. Appellant-wife is aggrieved by the impugned judgment and decree rendered by the Family Court dismissing her application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955').

2. The parties were in love, which culminated into their marriage on 13-2-2006. At that time they were unemployed. In the year 2008 the appellant-wife was appointed as Shiksha Karmi Grade II whereas the respondent-husband was appointed as Agriculture Development Extension Officer (ADEO) and both were posted at Kawardha. After some time differences arose between them. The appellant-wife is alleging that the respondent-husband, his parents and his sister started treating her with cruelty, both mentally and physically. She was obtaining treatment for procreating a child, however, the respondent stopped the treatment midway. The appellant lodged a report against the respondent and his family members on 30-7-2014 under the provisions of the Domestic Violence Act and also lodged a complaint before the Women Commission, however, she still loves the respondent, therefore, she wants to reside with him.
3. On the other hand, the respondent-husband would allege that the appellant-wife is a stubborn & headstrong woman and from the very beginning she used to stay at her paternal house for most of the period. Whenever the appellant-wife used to come to her marital house, she would create disputes and would abuse his parents coupled with threat to commit suicide. He

would deny that his family members treated the appellant with cruelty and that they have never levelled allegation against the appellant-wife that she is not able to procreate a child. It is also stated by the respondent that he has moved a petition under Section 13 of the Act, 1955 before the Family Court, Rajnandgaon.

4. Based upon the pleadings and evidence adduced by the parties, the Family Court concluded that there appears to be dispute and differences between the parties which are not reconcilable and, as such, it is not a case where either of a party has withdrawn from the company without reasonable excuse meaning thereby that both the parties have their own excuse to live separate.
5. Bare perusal of the evidence would indicate that the appellant has admitted that during her stay with the respondent at Rajnandgaon and Sahaspur Lohara dispute used to occur every alternate day or once in a week and that this has continued for last 4-5 years. It is not disputed between the parties that both of them are living separate since January, 2013. The appellant has also sworn an affidavit on 4-5-2007 (Ex.D/1), a reading whereof would explicit that their differences were sought to be reconciled and in that course she had admitted that after 15 days of

marriage dispute has occurred between them, however, in future she would not extend threat to commit suicide and if anything untoward happens with her, she will bear the sole responsibility.

6. In addition to the above, the respondent-husband has also moved a petition for grant of divorce, therefore, in the facts and circumstances of the case, the trial Court has not committed any error in dismissing the application under Section 9 of the Act, 1955 preferred by the appellant-wife. The judgment and decree rendered by the trial Court does not call for any interference.
7. As a sequel, the appeal, being bereft of merit, is liable to be and is hereby dismissed. However, it is made clear that any observation made in this judgment or in the judgment of the trial Court shall not either way affect the merits of the divorce proceedings pending before the Family Court, Rajnandgaon.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

Gowri