

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal (M) No.109 of 2015**

Amit Kumar aged about 33 years S/o Shivshankar Caste Thawait R/o Chandaniyapara Janjgir Police Station and Tahsil Janjgir District Janjgir-Champa Chhattisgarh

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

Smt. Bharti aged about 28 years W/o Amit Kumar Caste Thawait R/o Chandaniyapara Janjgir at present resident of Karaihapara Ratanpur Police Station and Tahsil Ratanpur District Bilaspur Chhattisgarh

**---- Respondent**


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| For Appellant  | : Ms. Nirupama Bajpai, Advocate.                      |
| For Respondent | : Shri Akhil Mishra and Shri Anand Shukla, Advocates. |

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri Arvind Singh Chandel, Judge.**

**Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****04/10/2017**

1. The Appellant and the Respondent married on 21.5.2010. They are governed by the provisions of the Hindu Marriage Act, 1955. The Appellant-husband sued for divorce. The Respondent-wife did not appear before the Family Court. Nevertheless, the Family Court held that materials were not sufficient to hold that grounds existed to grant divorce on the plea of cruelty and desertion. The Family Court therefore granted the husband an order of judicial separation as an alternate relief in the application for divorce. He is therefore in appeal challenging the decision of the Family Court. His plea is that the Family Court ought to have granted a decree for divorce.
2. The Respondent appears through counsel. It is noted that the Respondent-wife did not appear before the Court below. To our query in that regard, the learned counsel for the Respondent submits that his client was not served with notice by personal service. It is pointed out that there appears to have some attempt for

substituted service through paper publication and a publication is shown to have been carried out through a local newspaper, which was apparently not accessible to the Respondent-wife, going by the submission of her learned counsel.

3. Hearing the learned counsel for the Appellant-husband and the learned counsel for the Respondent-wife, we are of the view that insofar as matrimonial jurisdiction is concerned, this is an abundantly fit case where the parties should be given an opportunity to have the claim of the husband for divorce decided on its merits. We say this more importantly because there was an earlier proceeding under Section 125 CrPC. We also see that the Respondent-wife did not have adequate opportunity to contest the matter before the Family Court. On the totality of the facts and circumstances of the case, we are of the view that this is an eminently fit case for remand to facilitate the parties to place their pleadings on record and also to adduce evidence. The learned Family Judge would also then have an opportunity to carry out due procedure in terms of the provisions of Family Court Act, 1984 and other provisions to facilitate alternative disputes resolution modes, by way of mediation or otherwise.
4. In the result, the appeal is allowed setting aside the impugned order and remanding Civil Suit No.109-A of 2013 of the Family Court, Janjgir, District Janjgir-Champa, Chhattisgarh to that Court for decision afresh after giving opportunity to the parties to place further pleadings and also adduce all evidence. The Family Court will decide that case *de novo* untrammelled by anything stated in the order that is challenged in this appeal. The parties are directed to mark their appearance before the Family Court, Janjgir, District Janjgir-Champa, Chhattisgarh on 15<sup>th</sup> November 2017. That will enable the Family Court to appropriately list the case without issuing any further notice to the parties.

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

Sd/-

(Arvind Singh Chandel)  
**JUDGE**