

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 110 of 2015**

- Rajkumar Yadav, aged about 26 years, S/o Shiv Prasad Yadav, Caste Yadav, R/o Kharaud, Police Station Sheorinarayan, Tahsil- Pamgarh, District: Janjgir-Champa (C.G.).

---- Appellant**Versus**

- Smt. Maheshwari @ Pinki, aged about 24 years, W/o Rajkumar Yadav, R/o Kharaud, at present resident of Barpali (Champa), Police Station & Tahsil- Champa, District Janjgir-Champa (C.G.).

---- Respondent

For Appellant	:	Mrs. Vimlesh Bajpai, Advocate
For Respondent	:	None

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

Judgment On Board By
Justice Prashant Kumar Mishra

24/08/2017

1. In a petition for divorce filed by the appellant-husband under Section 13(1) of the Hindu Marriage Act, 1955 (henceforth 'the Act'), the trial Court passed a decree of judicial separation under Section 10 of the Act with stipulation that the parties may apply for a decree of divorce in terms of Section 13 (1-A) (i) of the Act.
2. The respondent-wife has not entered appearance in this appeal despite service of notice. She was proceeded *ex-parte* before the Family Court also. She has not moved any separate application to challenge the impugned decree nor has preferred any application for

setting-aside the impugned *ex-parte* decree before the trial Court itself.

3. On the basis of pleadings made and the evidence adduced by the appellant and his witnesses namely -Yogendra Yadav (A.W.2) and Narayan Yadav (A.W.3), the trial Court has found established that the respondent-wife had no liking or loving for the appellant and was always mis-behaving or raising quarrel with the members of the appellant's family. When this behavior and attitude of the respondent-wife was communicated to her parents, they visited to the appellant's house along with 10-12 villagers and took her along with them. During their visit to the appellant's house, they abused and manhandled the appellant and his family members. The appellant went to the respondent-wife's house many times to bring her back to his house, however, she did not come back.
4. It was the specific case of the appellant that during the proceeding under Section 9 of the Act instituted by him for restitution of conjugal right, the respondent-wife appeared and flatly refused to join the company of the appellant. A copy of the order passed by the trial Court, Janjgir-Champa on appellant's application under Section 9 of the Act has also been placed on record. By this decree dated 03/07/2013, the respondent-wife was directed to join the company of the appellant, however she did not comply with the order despite the fact that she appeared before the Court on 19/06/2014 but refused to join the company when a meeting for reconciliation was directed by the family Court.
5. In the present proceeding also, the respondent-wife received the notice, but did not appear before the family Court. It is also noted that

neither the respondent-wife has initiated any application under Section 125 of the Cr.P.C. claiming maintenance nor has she lodged any report against the appellant alleging cruelty by him or his relatives.

6. It appears that the respondent-wife wants to live separate from the appellant without any just and reasonable cause. During all the relevant time, it was the appellant who set the law in motion by initially moving an application under Section 9 of the Act and thereafter the present proceeding under Section 13 of the Act. The respondent-wife appeared in the proceeding for restitution of conjugal right, but refused to join the appellant's company and thereafter remained *ex-parte* in the said proceeding also.
7. Considering the conduct of the respondent, we are of the considered view that the trial Court should have allowed the decree for grant of divorce on the ground of desertion under Section 13 (1) (ib) of the Act for the reason that *animus deserendi* on the part of respondent-wife to abandon the husband forever and not to join his company to perform marital obligation is writ large. The trial Court should have allowed a decree of divorce rather than passing a decree for judicial separation. Even otherwise, the decree for judicial separation was passed on 26/06/2015 and since then more than 2 years have elapsed. Either party to a marriage, whether solemnized before or after commencement of the Act, may present a petition under Section 13 (1A) (i) of the Act for dissolution of the marriage by a decree of divorce on the ground that there has been no resumption of cohabitation between the parties to the marriage for a period of 1 year or upwards after the passing of a decree for judicial separation in a proceedings in

which they were parties. This provision applies with full force in the facts and circumstances of the present case. Since, the respondent is not assisting the Court by participating in the proceeding initiated by the appellant, at the first instance and in the present proceedings as well, relegating the appellant to prefer another proceeding under Section 13 (1A) (i) of the Act does not appear to be in the interest of justice.

8. For the foregoing, we are of the considered view that the appellant is entitled for a decree of divorce.
9. Accordingly, the appeal is allowed. The impugned decree is modified to the extent that instead of a decree for judicial separation, the appellant is held entitled a decree for divorce. His marriage with the respondent-wife solemnized on 25/05/2010 is dissolved by a decree of divorce.
10. A decree be drawn up accordingly.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel