

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.147 of 2015

Judgment Reserved on : 7.9.2017

Judgment Delivered on : 9.10.2017

Smt. Sandhya Rani Goswami, W/o Dipak Giri Goswami, aged about 23 years, R/o Sewa Sadan Chikitsalaya, Top of Corporation Bank, Rajim Road, Near Bus Stand Abhanpur, District Raipur (Chhattisgarh), At present address: Through Smt. Jangi Thakur (Retired Teacher), Near Thana, In front of Jassi Kirana Store, Abhanpur, District Raipur (Chhattisgarh)

---- Appellant

versus

Dipak Giri Goswami, S/o Kailash Giri Goswami, aged about 25 years, R/o Bajrang Provision Stores, Masjid Road Kota, Tahsil and District Raipur (Chhattisgarh)

--- Respondent

For Appellant : Shri A.D. Kuldeep, Advocate
For Respondent : None

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

Per Arvind Singh Chandel, J.

1. This appeal under Section 19(1) of the Family Courts Act, 1984 (henceforth 'the Act of 1984') is directed against the judgment and decree dated 24.7.2015 passed in Civil Suit No.29A of 2011 by the 2nd Additional Principal Judge, Family Court, Raipur by which the Family Court has allowed the Respondent/husband's application under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (henceforth 'the Act of 1955') for dissolution of marriage with the Appellant/wife.
2. Facts, in brief, as projected by husband Dipak Giri Goswami is that on 11.7.2008, a marriage was solemnised between him and Sandhya Rani Goswami. After few days, the Appellant/wife started giving mental harassment to the Respondent/husband. She did

not go to live in the in-laws' house. Thereafter, she left her in-laws' house in the year 2008. Till then, she is living at her paternal house. The husband tried to bring her back 6-7 times, but she refused. Thereafter, he filed an application under Section 9 of the Act of 1955 before the Family Court at Raipur, which was allowed in his favour. In spite of that, the wife did not return to him. Thereafter, the husband filed a divorce petition before the Family Court on the ground of desertion and cruelty.

3. The case of the Appellant/wife is that after the marriage, only for 4 days, behaviour of the Respondent/husband towards her was cordial. He used to establish unnatural sexual intercourse with her due to which she fell ill and thereafter he left her at her paternal house.
4. Learned Counsel appearing for the Appellant/wife argued that cruelty towards the Respondent/husband by the Appellant/wife was not proved. In fact, it was the husband who was committing cruelty with the wife and for this reason only, she is separately residing.
5. No one appeared for the Respondent, therefore, we minutely examined the record.
6. Plaintiff's Witness Dipak Giri Goswami (Respondent/husband) has deposed that after 15 days from the marriage the wife is voluntarily living at her paternal house. He tried to bring her back many times, but she refused.
7. Defendant's Witness Smt. Sandhya Rani Goswami (Appellant/wife) has admitted that she lived at her matrimonial house for 3 months only and thereafter she is living at her paternal house. She also admitted that earlier she had filed an application under Section 125 Cr.P.C. for grant of maintenance which was dismissed on merit.

She also admitted that her husband had filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights in which also she had refused to reside with him. She further admitted that a decree for restitution of conjugal rights was granted in favour of the husband. Thereafter, the husband along with his father had come to bring her back, but again she had refused to go back with them. She further admitted that she herself did not want to live with the husband, therefore, she did not return. She categorically stated that she still does not want to live with the husband.

8. From a perusal of the record, it also appears that earlier the Appellant/wife had submitted an application under Section 13 of the Act of 1955 against her husband, which was, later on, withdrawn by her. Her application under Section 125 Cr.P.C. was also dismissed on the ground that she herself was separately living without any reasonable ground.
9. In the light of above discussion, it is clear that the Appellant/wife has deserted the Respondent/husband without any sufficient reason and, therefore, there is no perversity in the finding arrived at by the Family Court warranting interference by this Court.
10. Consequently, the appeal is liable to be and is hereby dismissed.
11. A decree be drawn up accordingly.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Arvind Singh Chandel)