

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 186 of 2015

- Rajesh Kumar Rathore S/o Ramsingh Rathore, Aged About 29 Years R/o S.E.C.L. Colony, Nahariya Baba Road, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

- Priti Rathore W/o Rajesh Rathore, Aged About 20 Years R/o S.E.C.L. Colony, Nahariya Baba Road, Janjgir, At Present R/o Priti Rathore D/o Ramgopal Rathore R/o Tendu Bhatha, Out Post P.S. Naila, District Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant

Mr. Kalyan Kalamkar, Advocate

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

Order On Board By

Prashant Kumar Mishra, J.

7/7/2017

IA No.01

1. This is an application for condonation of delay in filing the appeal.
2. On due consideration and for the reasons stated in the application, the same is allowed and the delay is condoned.

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3. Heard on admission.
4. The appellant is aggrieved by the order passed by the Family Court, Janjgir-Champa, rejecting his prayer under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.
5. The marriage between the parties was solemnized on 01.04.2012. The appellant is an auto-driver by profession, whereas, the respondent is a housewife.
6. The appellant's case before the trial Court was that initially they were pulling on well, however, after sometime, the wife started pressurising him to live separate from the family, which was not accepted by the appellant, therefore, she became annoyed and went to her parental house. On persuasion of the appellant and the elderly members of the society, she came back and thereafter, she gave birth to a baby girl namely Soumya Rathore on 27.12.2012. After giving birth to the daughter, she went to her parental house and refused to come back till the appellant starts residing separately.
7. The appellant did start residing separately at Tendubhatha since after May 2013, however, the respondent did not improve upon her quarrelsome behaviour. On 22.5.2013, respondent's father came to their house and enquired about the dispute between the parties. After her father's departure at 12:00 AM, the appellant came back to his house at 1:00 AM and found that the respondent is not well, therefore, she was immediately taken to

the District Hospital, Janjgir-Champa, where-from, she was referred to CIMS, Bilaspur. On 22.7.2013, the respondent's brother came to their house, with whom, she went to her parental house and since thereafter, she had not come back.

8. The respondent alleged commission of cruelty, demand of dowry, ill- treatment etc by the appellant and her in-laws. She also alleged that on 22.5.2013, the appellant, his parents and siblings tied her hands & feet and administered insecticide. When she was assaulted and dragged out of the house, she lodged the FIR.
9. We have perused the impugned judgment, the pleadings and deposition of the witnesses.
10. From the very beginning, the respondent has asserted that she was treated with cruelty and was administered insecticide yet the appellant has not stated anything about this evidence in his examination-in-chief. Similarly, the respondent has deposed in her examination-in-chief by reiterating the allegations yet she was not cross-examined by giving suggestion that the allegations of administering insecticide is false and concocted.
11. Once it is *prima facie* established that the wife was treated with cruelty, which was grave and serious, she was justified in refusing to resume the conjugal obligations.
12. If the appellant and his family members were ill treating the respondent-wife, the wife has every right to refuse to join his company and in such eventuality, the decree for restitution of

conjugal rights has rightly been refused by the trial Court.

13. For the above stated reasons and discussions, we do not find the present to be a fit case for admission, therefore, the appeal deserves to be and is hereby dismissed at the admission stage itself.

Sd/-

Judge
(**Prashant Kumar Mishra**)

Sd/-

Judge
(**Arvind Singh Chandel**)

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