

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 175 of 2015

- Uttara Kumar Kashyap S/o Sonsai Kashyap, Aged about 32 Years, R/o Village Khisora, Tahsil Nawagarh, District Janjgir-Champa, (Chhattisgarh)(Plaintiff) ---- **Appellant**

Versus

- Smt. Supet Bai Kashyap W/o Uttara Kumar Kashyap, Aged about 30 Years, D/o Gaukaran, R/o Kamrid, Tahsil Champa, District Janjgir-Champa, (Chhattisgarh)(Defendant) ---- **Respondent**

For Appellant	:	Shri Ritesh Verma, Advocate.
For Respondent	:	Shri Gurudeo I. Sharan, Advocate

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

Judgment on Board By
Prashant Kumar Mishra, J.

06-07-2017

1. The appellant – husband is aggrieved by the order passed by the trial Court dismissing his application under Section 13 of the Hindu Marriage Act, 1955 for dissolution of the marriage between the parties.
2. The parties were married on 01-05-2001. The *Gauna* ceremony was performed on 04-02-2002. According to the appellant, the respondent - wife stayed in the matrimonial house for about 13-14 days. Thereafter, her father took her with him for attending a festival i.e. *Dhoolpanchami* at village Pithampur wherefrom she went to her parental house. She came back to her matrimonial house after one month and stayed with the appellant till 27-03-2002 and thereafter she is residing in her parental house. The appellant has alleged that

the respondent – wife has deserted his company without any sufficient cause, therefore, he is entitled for a decree of divorce.

3. The respondent – wife contested the suit on pleadings that she stayed in her matrimonial house for about two years. However, she gave birth to a baby girl who was dumb from birth, therefore, the appellant refused to own the daughter. He neither made any effort to bring her back to the matrimonial house.
4. Per contra, learned counsel for the respondent would submit that the appellant having disowned the daughter there was sufficient cause for the respondent – wife not to join the company of the appellant. Therefore, the trial Court has rightly refused to pass a decree in appellant's favour.
5. The trial Court dismissed the suit on finding that the appellant appears to have ill-treated the wife by refusing to bring her back to the matrimonial house and at the same time has disowned the girl. Therefore, the ground of desertion is not made out in favour of the appellant.
6. We have heard learned counsel for the parties at length and perused the record.
7. A decree on the ground of desertion is allowed when the other spouse has all the intention to live separately after leaving the company of the appellant and there is definite availability of the element *animus deserandi*. In order to succeed in a suit for divorce on the ground of desertion, the plaintiff has to establish that the respondent is residing separately without any justification or lawful

cause and there is no intention on the part of the respondent to resume the rights and obligations of the marital institution.

8. On perusal of the evidence of appellant's witnesses, namely, Uttara Kumar (AW-1), Budhram (AW-2), Mahavir Kashyap (AW-3), Sonsai (AW-4) and Gopiram (AW-5), it would appear that neither the appellant nor his father made any sincere effort to bring the respondent - wife back to the matrimonial house. The more important evidence has come in the statement of respondent which is mentioned in para 20 of the impugned judgment. It records that when the respondent was asked as to whether she desires to live with her husband, she stated that she wants to reside with the appellant - husband. However, the appellant has stated that she is living separately from him for a quite long time, therefore, she should prove the paternity of the daughter. This statement of the husband is indicative of his mental state where he has not only left the wife at the mercy of her parents but also disowning the daughter. Both these acts would sufficiently amount to commission of cruelty by the appellant rather than desertion by the respondent.
9. In the state of evidence on record, we do not find any illegality or perversity in trial Court's order dismissing the suit for divorce on the ground of desertion.
10. At this stage, learned counsel for the appellant would submit that the parties are residing separately for last more than 10 years, therefore, the marriage may be dissolved on the ground of irretrievable break down of marriage or they may be given opportunity to seek divorce by

mutual consent. A decree for divorce on the ground of irretrievable break down is not one of the grounds under Section 13 of the Hindu Marriage Act. A decree on such ground is allowed by the Supreme Court in exercise of powers under Article 142 of the Constitution which is not available to this Court. In so far as a decree of divorce on the basis of mutual consent is concerned, if the parties reach to such an understanding, it will remain open for them to move an application therefor, if permissible in law.

11. Consequently, the instant appeal is dismissed in the aforesaid terms.

Sd/-

JUDGE
(Prashant Kumar Mishra)

Sd/-

JUDGE
(Arvind Singh Chandel)