

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 170 of 2016

- Smt. Priyanka Singh, W/o Amit Singh, Aged about 25 years, R/o Dr. Rajendra Prasad Nagar, House No. L.I.G. 01, Kosabadi, Korba, Tehsil Korba, Revenue & Civil District - Korba (C.G.) ---- **Appellant**

Versus

- Amit Singh, S/o Surendra Prasad Singh, Aged about 32 years, R/o Near Kankalin Temple, Dadarkhurd, Tehsil Korba, Revenue & Civil District Korba (C.G.) ---- **Respondent**

For Appellant	:	Shri Rishi Sahu, Advocate.
For Respondent	:	None

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

Order on Board By
Prashant Kumar Mishra, J.

29-06-2017

1. The appellant would assail the impugned judgment and decree whereby her application under Section 13 of the Hindu Marriage Act, 1955 for grant of decree of divorce, has been dismissed.
2. The parties were married on 30-05-2009 and they have a son out of the wed-lock. The application seeking divorce was preferred on the ground that the family members of the respondent/husband were demanding golden chain; they withdrew a sum of Rs.50,000/- from her insurance policy; she was subjected to assault in her matrimonial house; the husband tried to abort her when she was carrying pregnancy in the year 2010; she was thrown out of the house in the midnight and she was threatened that if she does not leave the

matrimonial house, she will be set on fire. It is also alleged that on 15-01-2012, she was dropped at her parental house at Bankimogra at 11-00 p.m. where she is presently residing.

3. The respondent denied all the allegations made in the plaint. In course of trial, the appellant examined herself (AW-1) and her sister-in-law (Bhabhi) Smt. Sushma Singh (AW-2). However, the respondent did not examine any witnesses. The appellant submitted affidavit of one Ramesh Kumar but he was not produced for cross-examination, therefore, his statement cannot be read in evidence.
4. Perusal of deposition of the appellant (AW-1) and Smt. Sushma Singh (AW-2) would indicate that both the witnesses admit that whenever the appellant used to fell ill, the respondent was providing treatment by incurring the necessary expenditure. They have also admitted that the respondent/husband had not taken the appellant for abortion. Thus, the allegation of trying to abort the child or not taking care at the time of illness appears to be concocted. Similarly, the allegation of commission of intense cruelty by assaulting and throwing out of her house in the midnight has been levelled on the husband, however, the matter was never reported to the police or to the elderly members of the society or to the District Family Welfare Center. Therefore, the trial Court appears to be fully justified in drawing conclusion that the appellant has not been able to prove the allegation of cruelty in accordance with standards laid down by the Supreme Court for proving the factum of cruelty. See **Dr. N.G. Dastane Vs. Mrs. S. Dastane**, (1975) 2 SCC 326, **V. Bhagat Vs. D. Bhagat (Mrs.)**,

(1994) 1 SCC 337, **Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another**, (1981) 4 SCC 250, **Savitri Pandey Vs. Prem Chandra Pandey**, (2002) 2 SCC 73, **Gananath Pattnaik Vs. State of Orissa**, (2002) 2 SCC 619, **Praveen Mehta Vs. Inderjit Mehta**, (2002) 5 SCC 706, **Chetan Dass Vs. Kamla Devi**, (2001) 4 SCC 250, **A. Jayachandra Vs. Aneel Kaur**, (2005) 2 SCC 22, **Naveen Kohli Vs. Neelu Kohli**, (2006) 4 558, **Sujata Uday Patil Vs. Uday Madhukar Patil**, 2007 AIR SCW 986, **Manisha Tyagi Vs. Deepak Kumar**, AIR 2010 SC 1042 and **Ramchander Vs. Ananta**, (2015) 11 SCC 539.

5. The respondent remained *ex-parte* after filing of the written statement and cross-examining the appellant's witnesses. He did not file his affidavit under Order 18 Rule 4 of CPC nor presented himself for examination in the Court. In such a situation, ordinarily it would appear that the allegation of cruelty has not been defended properly by the respondent, therefore, a decree should follow. However, in a case where a decree of divorce is sought, one of the necessary pleadings to be made by the plaintiff in the plaint, is that the parties are not colluding. Even if such statement is made in the plaint, it is the duty of the Court to be alert and assess the situation throughout the progress of the trial because in a given case, the party may not appear to be colluding at the beginning but the same may develop at a later stage.
6. We have perused the entire order-sheets recorded by the trial Court. Few dates are relevant which would need reference. The plaint was

presented on 20-02-2014. The respondent appeared on 29-03-2014 but remained absent on 17-04-2014 and 22-04-2014. He was proceeded *ex-parte* on 02-07-2014 which was subsequently set aside on 05-07-2014. In the present appeal also the respondent has failed to appear despite service of notice. The trial Court referred the parties for mediation wherein initially the wife agreed to live with the respondent/ husband on which the husband sought time to consider but later on, the wife refused to live with the husband and on 29-07-2014, the parties sought time to move application for divorce by mutual consent. Further effort for mediation failed and the parties also did not move any application for divorce by mutual consent. The respondent thereafter, appeared to cross-examine the appellant's witnesses but did not appear to examine himself. Moreover and more importantly the wife never moved any application under Section 24 of the Hindu Marriage Act seeking maintenance from the respondent/ husband even though the trial remained pending for two years. In the above factual back drop, we have our own doubts that the parties have bonafidely presented their case before the trial Court. If the conduct of the parties are tested in the right perspective there is strong possibility that having once stated to move an application for divorce by mutual consent, they later on developed an understanding whereafter husband remained absent from the proceedings so that the deposition of the appellant's witnesses would be read in evidence and there will be no evidence for the respondent coupled with the observation by the trial Court that the appellant never made any complaint to the police or to the elderly members of the society

regarding commission of cruelty by the respondent. It would appear that the parties have not approached the Court with clean hands. Therefore, the trial Court has not committed any illegality or perversity in findings that the appellant has failed to prove the allegation of cruelty on application of the principles of preponderance of probability. The appeal deserves to be dismissed and is accordingly, dismissed.

Sd/-

JUDGE
(Prashant Kumar Mishra)

Sd/-

JUDGE
(Arvind Singh Chandel)