

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 29 of 2001****Judgment reserved on 19-6-2018****Judgment delivered on 5-7-2018**

Shailendra Kumar Shrivastava son of Visheweshar Prasad Shrivastava, aged about 39 years, R/o Ward No. 38, Vasantpur, Rajnandgaon Tahsil & District Rajnandgaon Chhattisgarh

---- Appellant**Versus**

Renuka Shrivastava w/o Shri Shailendra Kumar Shrivastava, aged about 37 years, resident of Ward No. 7, Balod, Tahsil Balod, District Durg (Chhattisgarh)

---- Respondent

For Appellant : Shri H.B. Agrawal, Senior Advocate with
Ms. Prabha Sharma, Advocate

For Respondent : None

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**CAV Judgment**

1. This appeal is preferred under Section 28 of the Hindu Marriage Act, 1955 against the judgment and decree passed by the Additional District Judge, Balod, Civil District Durg (CG) in Civil Suit No. 3-A/99 dated 22.12.2000, wherein the said Court had granted a decree of restitution of conjugal rights in favour of the respondent.

2. Learned counsel for the appellant submitted that sister of the appellant was married to the brother of the respondent and the appellant married to the respondent. The respondent has pleaded before the trial Court that she has been treated with cruelty by the appellant, but ignoring this fact, the trial Court has directed for

restitution of conjugal rights in favour of the respondent. When she alleges cruelty then she has a right to file a suit for separation but, restitution cannot be granted in her favour. The respondent has committed inordinate delay in filing the suit, therefore, decree in her favour ought not to have been granted. Contention of the appellant is that intention of the respondent is malafide as she is willing to implicate him in criminal case, therefore, finding of the trial Court is not proper.

3. Decree of restitution of conjugal rights is granted by the trial Court under Section 9 of the Hindu Marriage Act (hereinafter referred to as the Act) which reads as under :

9. Restitution of conjugal rights – When either the husband or the wife has without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the restitution should not be granted, may decree restitution of conjugal rights accordingly.

Explanation :- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

4. Looking to the legal aspect of the matter, first question for consideration of this Court is as to who has withdrawn from the society of the other.

5. The appellant has been examined before the trial Court as NAW1 and the respondent has been examined as AW1 and her witness Sachin Shrivastava as AW2. From the statement of the respondent, it is established that marriage of the appellant and the respondent was solemnized on 15.7.1986 and after marriage the respondent was living with the appellant and the family was patri local. It means matrimonial house of the respondent was the house of the appellant. The respondent further deposed that she has been ousted by the appellant from the house and thereafter, he has not persuaded her to live with him. Version of the respondent is supported by Sachin Shrivastava AW2. The appellant (NAW1) deposed before the trial Court that the respondent was not willing to live with him and she herself had left the matrimonial house and returned to her parental house.

6. From the evidence of the appellant, it is clear that he has not persuaded the respondent to live with him as well as no attempt was made by him to get the respondent back to his house. When the matrimonial house of the respondent was the house of the appellant, the appellant was under obligation to make genuine efforts for reconciliation if he believes in marriage ties.

7. Number of allegations were made against physical condition of the respondent by the appellant but, there is no opinion of medical expert in the record of the trial Court to substantiate the same. The trial Court, after proper marshaling of the evidence came to the conclusion that the appellant has withdrawn from the society of the respondent and looking to the material placed before the trial Court, this Court is satisfied that the finding arrived at by the trial court is based on proper marshaling of the evidence and, therefore, finding of the trial Court that the appellant has withdrawn from the society of the respondent needs no interference.

8. The next point for consideration is whether there is any lawful reason as mentioned in Section 13 of the Act for divorce or judicial separation for the appellant to withdraw from the society of the respondent? Those grounds should be specifically pleaded and proved by the party who is withdrawing from the society of the spouse, but the appellant has not specifically pleaded nor proved any such reason mentioned under Section 13 of the Act. The respondent has filed application for restitution of conjugal rights and she is willing to live with the respondent. The appellant/husband after withdrawing from the society of the respondent/wife simply denying the averments made in the application filed by the respondent. It shows that the appellant has not substantially established any lawful reason for withdrawing from the society of the respondent.

9. Considering the facts and circumstances of the case and the material available on record, this Court of the opinion that the trial

Court is right in awarding the decree in favour of the respondent and the same is not liable to be interfered with invoking jurisdiction of the appeal.

10. The decree in favour of the respondent and against the appellant is passed on the following terms and conditions :

- (1) The appeal is dismissed with cost.
- (2) Parties shall bear their own cost.
- (3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.
- (4) A decree be drawn accordingly.

Sd/

(Ram Prasanna Sharma)
JUDGE