

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 147 of 2001**

- Hemant Parasar, S/o Shri V.S. Parasar, aged about 33 years, Occupation: Service, resident of 6/3, Nehrunagar, West Bhilai, Tahsil and District Durg (Chhattisgarh)

---- Appellant**Versus**

- Smt.Kamini Parasar, Wife of Hemant Parasar, Occupation : Service/Assistant Professor, 3/5 Kendriya Vidyalay No.1, Shakti Nagar, Gwalior (M.P.)

---- Respondent

For Appellant	:	Shri D.C. Verma, Advocate
For Respondent	:	Shri Avinash Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/11/2018**

1. Heard.
2. The present appeal arises out of an order dated 04.10.2001 passed in civil Suit No.14-A/1999 passed by the 3rd Additional District Judge, Durg, whereby the prayer for decree for divorce was dismissed. The suit was filed by the husband/appellant/applicant on the ground that the respondent/wife has deserted him without any sufficient cause. The instant appeal is filed by the husband.
3. The facts, as would reveal that the marriage of the appellant and the

respondent took place on 03.11.1995 at Bhilai according to the Hindu rituals, thereafter, the respondent/wife joined her matrimonial home and started living there. It was pleaded that father and mother of boy were working at Andhra Pradesh and they used to visit there home at Bhilai within a gap of more than three months. It was stated that after the marriage, the wife got an opportunity of job and was selected as an Assistant Professor in the education department and she had to join her posting somewhere else other than her place of matrimonial home. It was stated that the husband suggested the wife not to join her place of posting away from Bhilai but she did not hear the advice and however supported by her family members and without the consent eventually she joined her job at other place. Before that during the period of cohabitation a girl child was born on 16.10.1996. It was further pleaded that on 20.12.1996 the mother of the appellant while was going to Delhi, the wife went along with her and from Jhansi she was accompanied by her brother and she went to Gwalior. It was stated that according to the understanding she was to join back her mother-in-law while she was coming back from Delhi, but she did not join and instead joined her job. It was pleaded therefore, the non-applicant/wife without any sufficient cause has left the husband and since was working against the wish of the husband at different place of her matrimonial home, thus has deserted the husband, therefore, the marriage be annulled by decree of divorce under Section 13 (1) (i-b) of the Hindu Marriage Act. The petition for divorce was preferred by the husband on 15.01.1999 before the Court of Additional District Judge, Durg.

4. The non-applicant/wife contended that before the marriage it was stated that her husband is in a good job but after the marriage she came to know that the husband was not working anywhere. It was further contended that at the time of marriage this understanding was arrived at in between the family members that the wife being educated, she would join some job whenever she gets the same, to which the mother of the appellant/husband agreed for the reason that her daughter was also working. It was stated that the husband was completely dependent on his mother and father, therefore, the wife had decided to join a job. The non-applicant/wife further contended that before the marriage she had appeared for the examination & selection of Assistant Professor through Public Service Commission and after the marriage with the consent of the husband she appeared in the interview and in the month of May-June the result was declared, wherein she was selected. It was further stated that after such fact came to the notice of the family members of the husband, they started misbehaving with her and in the month of June, 1996, the family members of the wife were called to Bhilai and were told that their daughter-in-law may either do the job or give divorce to the boy. It was further stated that the family members of the wife were also subjected to misbehave. It was further stated that on 19.12.1996 while the mother-in-law of the respondent/wife was going to Jhansi, she joined her and she went uptill Jhansi, thereafter, along with his brother she went to Gwalior. She further stated that while the mother-in-law was coming back she again wanted to come back but she refused to take her back to Bhilai. It is further stated that the husband was completely depending as a parasite on his mother and father, therefore, despite the fact that the

husband was agreed for his wife to join the job, he could not oppose. It is further stated that a petition for restitution of conjugal rights was also filed before the Court at Gwalior, but it was dismissed for want of jurisdiction.

5. Learned Court below on the basis of the pleading of the parties framed six issues and came to a finding that no ground exists to hold that the wife has deserted the husband, therefore, dismissed the petition for divorce. Therefore, the instant appeal.
6. Learned counsel for the appellant would submit that the allegations of the wife would show that she has complained about the misbehavior after she left the matrimonial home, therefore, it would be suffice to hold the intention of desertion that the wife has intentionally deserted the husband. He further submits that without the consent of the husband the wife joined the duties at another place thereby it would amount to desertion. He further submits that the wife never tried to rejoin her matrimonial home that would show the intention of the wife and at present the husband and wife they are apart and separated for more than 22 years and are not in any relation, therefore, the marriage has irretrievably broken, as such no purpose would be served to continue the marital tie, consequently, the appeal be allowed and decree of divorce be granted.
7. Learned counsel for the respondent opposes the argument and submits that the order of the Court below is well merited which do not call for any interference. He further submits that there is no evidence on record to show that the wife has

deserted the husband. Consequently, the evidence which is on record supports the dismissal of the appeal.

8. I have heard learned counsel for the parties at length and perused the record.
9. The husband, Hemant Parasar was examined as PW-2. He stated that after the marriage on 03.11.1995 after some time after they came back from their honeymoon, the wife went along with her brother to Gwalior on 29.11.1995 and she came from there on 13.12.1995. He stated that after she came back from Gwalior, the wife asked if she gets a job, whether the husband would allow her to join the duties to which the husband replied that after the job is procured then he will think over it. The appellant further stated that subsequently his father stated that if the wife gets a job at Bhilai then only they will allow her to join the job. The witness further stated that in the meanwhile they went to different places and went to Gwalior also and on 13.04.1996 again she came back with her husband to Bhilai. Then again she went to Gwalior and then came back on 10th of May, 1996 and she started pressurizing to allow her to join the job. The witness further stated that thereafter he said that he asked her wife not to join the job. Subsequently again on 09.06.1996 the mother and father of the respondent/wife again came to Bhilai and requested the appellant/husband to allow her to join the job at Gwalior, but it was refused by husband. The witness further stated that subsequently on 16.10.1996 they were blessed with a girl child and while her brother and sister came to meet her they informed that she was selected for a job, wherein the wife asked them and requested to get the extension of time to join the job. The witness further stated since the maternal

grandfather and mother had not seen the baby girl, the wife went along with her mother-in-law, who was going to Jhansi and on information, the brother of wife came to Jhansi and took the respondent to Gwalior. The witness further stated that subsequently while the mother was coming back, the wife did not join her mother-in-law but assured that she would be joining after some time.

10. As against this, the defendant/wife Kamini Parasar (DW-1) stated that when she wanted to come back after going to Gwalior, the mother-in-law refused to take her back. The said averment of the wife do not appear to be plausible since she joined her job on 21.09.1997 i.e. after few days and joined as Assistant Professor at Jaura, District Morena. The wife stated that the husband was not against the job, but according to the dictation of his mother and father, the husband could not support her. She further stated that when she got the interview call to appear at Indore, it was with the consent of the husband she went for interview. The wife further stated that after the in-laws came to know that she was selected for a job, their behaviour towards her changed and she was given an option either to do the job or give divorce. She further stated that initially she did not join the job but subsequently she joined.

11. The evidence of both the parties would reveal that because of the job, of wife at place Jaura, District Morena, she started living at Gwalior away from matrimonial home. The husband has averred that without his consent the wife joined the job, whereas the wife has contended that it was with the consent of the husband. The cause of separation, therefore, appears to be for the reason that the wife got selected as Assistant Professor in the education department at

a place which was at a distance from the matrimonial home. According to the ordinary notions of the hindu society, the wife is expected to perform the marital obligations at her husband's residence. The fact of change in the society and the different life style of the persons also cannot be ignored at this stage and when the girl is well educated, it is not expected that she would be kept in a boundary of matrimonial obligation only in confinement. It is for the husband and wife to balance the marital ties, which they are duty bound to do for each other. At the social background if the girl procures a job of a like nature of the Assistant Professor, in these days when procuring a job on merits is difficult and highly competitive then no unilateral decision can be imposed on wife to make a choice either between husband or her job. Simultaneously, if the wife opted for job, the same cannot be termed as willful desertion.

12. The Supreme Court in the case of ***Joseph Shine V. Union of India (2018 SCC OnLine SC 1676)*** has observed that the wishes of the husband to throw a choice to the wife to hear to his wishes to make a choice as has happened in this case will slaughter her core identity. Further the husband and wife are to be equally treated and if the wife opted to join the job at a different place, she cannot be otherwise forced at the behest of the husband or his family members to remain at her matrimonial home alone. It is true, in modern days inflation is so high, the couple wants to augment their income but to have it peacefully the husband and wife has to workout the solutions which may continue with the matrimonial ties and social status of better living. If the wife has got the job on the basis of her merit and got selected at a place far away other than from her

matrimonial home, it cannot be said that she is guilty of desertion. It is the mutual respect of husband & wife for each other which keeps the family alive and if anyone acts in sudden spark with a knee jerk reaction and the husband tries to act as a master and dictate the wife to be at a particular place non-adherence thereto alone would not amount to willful desertion.

13. The facts as would suggest that the husband and wife are living separately and during the arguments it is been projected that there is irretrievable breakdown of the marriage. Irretrievable breakdown of the marriage is not a ground by itself for divorce, however, as has been held in the case of ***K. Srinivas Rao Versus D.A. Deepa*** {(2013) 5 SCC 226} relying upon ***V. Bhagat Vs. D. Bhagat*** {(1994) 1 SCC 337} the Court can observe those while scrutinizing the evidence on record. Reading of the entire file in this case would show that the husband has stated that because of the job the wife got somewhere else from matrimonial home, she was given option either to leave the job or to join her matrimonial home as a wife. It was stated that she was further advised to leave the job. The evidence and the averments of the petition shows that because of the job against the wishes of the husband claims that the wife has deserted. Except that no ground of any mental cruelty has been pleaded or evidence has been adduced. Evidence is also confined to the fact that the wife got the job outside and thereafter she joined there, thereby the separation was caused and further she refused to comeback by leaving her job. The irretrievable breakdown of the marriage on the ground of the mental cruelty neither been pleaded nor proved. In the background of this case if the decree of divorce is

granted on the ground of irretrievable background, it would amount to succumb to the eventual destination which the husband wanted to achieve on a ground of desertion by circumventing the cause. As such those grounds in facts of the case cannot be entertained.

14. In a result, after careful scrutiny of the entire evidence on record, I do not find any reason to interfere in the order. Accordingly, the appeal is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu