

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 20.04.2018****Delivered on 07.05.2018****First Appeal (Misc.) No. 18 of 2013**

(Arising out of the judgment and decree dated 09.11.2012 of the First Additional District Judge, Bastar at Jagdalpur, CG in Civil Suit No. 13-A/2012)

Smt. Vranda Baghel, W/o Shri Bhanuram Baghel, aged about 24 years, Caste Bhatra, Village Bhanupuri, Post Bhanupuri, District Bastar (C.G.)

---- Appellant**Versus**

Bhanuram Baghel S/o Shri Chaturam Baghel aged about 32 years, Caste Bhatra R/o Village Hatkachora, Bhatra Para, Batakh Godam Ke Pass, Jagdalpur, Thana Bodghat, District Batar (C.G.)

---- Respondent

For Appellant	:	Shri Punit Ruparel, Advocate
For Respondent	:	None.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. Heard on I.A. No. 1 for condonation of delay in filing the FAM as the instant FAM is barred by 6 days.
2. Considering the facts and circumstances of the case, I.A. No. 1 is allowed and the delay in filing the FAM is condoned.
3. In this appeal, the challenge is levied to the judgment and decree dated 09.11.2012 of the First Additional District Judge, Bastar at Jagdalpur, Chhattisgarh in Civil Suit No. 13-A/2012 whereby and whereunder he dismissed the divorce petition filed by the appellant-wife under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act, 1955') against respondent-husband.

4. In brief, the appellant's case is that both the parties are Hindu by religion, her marriage was solemnized with the respondent in accordance with Hindu rites and rituals in the year 2004 at Jagdalpur. In their wedlock, a son was born presently aged about 11 years who resides with her. After the birth of the son respondent stopped talking with her, he was abusing and beating her after consuming liquor. In September, 2008 he ousted her. She had tried to come back in his house, but he did not allow her. She is living separately from him since back three years.

5. Respondent was ex-parte in the trial Court. He has not filed written statement.

6. After conclusion of the trial, the trial Court passed the aforesaid judgment and decree. Being aggrieved, appellant preferred this appeal.

7. Shri Punit Ruparel, counsel for the appellant vehemently argued that the trial Court did not appreciate the evidence in proper perspective. Appellant's evidence was unrebutted. Thus, the impugned judgment and decree may be set aside and divorce may be granted to the appellant.

8. No one appears for the respondent at the time of hearing though served.

9. It would be pertinent to mention the provisions of Section 23(2) of the Act of 1955 which reads as under :-

“23. Decree in proceedings.—

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties :

Provided that nothing contained in this sub-section shall apply to any

proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of Section 13.”

10. In the matter of **Jagraj Singh -v- Birpal Kaur** [2007(2) SCC 564], Hon'ble Supreme Court held in para 11 and 26 that :-

“11. Bald assertion of the appellant- husband that no court of law can direct a party to remain personally present cannot be accepted. Apart from the matters under the Hindu Marriage Act, 1955, even in civil matters also, a court of law may order either the plaintiff or the defendant to remain personally present in court. For instance, Rule 1 of Order III of the Code of Civil Procedure, 1908 allows appearance of party in person or through his recognized agent or by an advocate. The proviso to the said rule, however, declares that any such appearance shall, if the court so directs, be made by the *party in person*. In appropriate cases, a civil court may direct a party to the suit —plaintiff or defendant, to appear in person.”

“26. A court is expected, *nay*, bound, to make all attempts and endeavours for reconciliation. Sub-section (2) of Section 23 is a salutary provision exhibiting the intention of Parliament requiring the court “in the first instance” to make every endeavour to bring about a reconciliation between the parties. If in the light of the above intention and paramount consideration of the legislature in enacting such provision, an order is passed by a matrimonial court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contended that the court has no such power and in case a party to a proceeding does not remain present, at the most, the court can proceed to decide the case *ex parte* against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and unworkable, defeating the laudable object of reconciliation in matrimonial disputes. The contention of the appellant, therefore, cannot be upheld.”

11. In the case in hand, it is unequivocal from the record of the trial Court that it has not made attempt to compel attendance of respondent to bring about a conciliation, though the trial Court ought to have done it. Instead of

doing so, trial Court proceeded exparte against the respondent on 9-7-2012 due to non-appearance of him despite service of summons to him. Moreover the appellant has pleaded in para 7 of his petition about the desertion but the trial Court neither framed point for determination regarding this matter nor gave any finding with reason in the impugned judgment.

12. Looking to the above mentioned facts and circumstances of the case, this Court sets aside the impugned judgment and decree passed by the trial Court and finds that in the case in hand, retrial is necessary. Thus, this Court remits the case to the trial Court with the directions that it, in the light of aforesaid provisions of Section 23(2) of the Act of 1955 and judicial precedent laid down in **Jagraj Singh** (supra), shall proceed to determine the suit in accordance with law and procedure within outer limit of two months from receipt of this order. Evidence recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

13. The appellant is directed to appear before the trial Court on 16-5-2018. Record be sent to the trial Court immediately.

14. The appeal is disposed of with above directions.

15. No order as to costs.

Sd/-
(Sharad Kumar Gupta)
JUDGE
7-5-2018