

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 55 of 2005**Reserved on : 07/08/2018Delivered on : 10/10/2018

- Hira Ram, S/o Late Ramji Dewangan, aged about 34 years, R/o Bhatgaon, Tahsil Bilaigarh, District Raipur (C.G.)

---- Appellant**Versus**

- Smt. Anju Dewangan, W/o Hira Ram Dewangan, aged about 32 years, R/o Tarpali, Tahsil & District Raigarh (C.G.)

---- Respondent

For Appellant	:	Shri Ashish Surane, Advocate.
For Respondent	:	None.

Hon'ble Shri Gautam Chourdiya, Judge**C.A.V. Judgment**

1. Appellant by instant first appeal is challenging the judgment and decree dated 23.02.2005, passed by 2nd Additional District Judge, Baloda Bazar, District Raipur (C.G.) in Civil Suit No.10-A/2002, whereby the petition filed by the Appellant under Section 13 of the Hindu Marriage Act, on the ground of cruelty has been dismissed.
2. Appellant was married to the Respondent in the month of May 1986 as per Hindu customs and rites. Out of the wedlock, the couple is having two issues, Kumari Deepshree, aged about 14 years and Deepesh Kumar, aged about 12 ½ years.
3. The contentions of the Appellant in the divorce petition was that the Respondent is a mental patient and on account of that he was subjected to cruelty for 10 years from the date of marriage. He had tried his level best to convince his wife and to make the family life happy, but the cruelty of the Respondent continued. She used to assault the Appellant, as a result of which, she was provided the treatments of the Psychiatric.

4. It has also been submitted by the Appellant that his daughter and son are also living with her and the Appellant was apprehending that the Respondent may assault his daughter and son as well. Respondent always misbehaved with Appellant and their family members. She was threatening the Appellant that she will commit suicide and falsely implicated the Appellant in a criminal case. Thereafter, Appellant filed petition under Secion 13 of the Hindu Marriage Act for divorce on the ground of cruelty on 11.02.2002.
5. In her written-statement Respondent denied all the allegations made by the Appellant. She submitted that is she who has been subjected to cruelty. It has been submitted by her that she is mentally fit and against her wishes she was being given medicines. Respondent is a B.A. graduate and she was teaching job from years 1994 to 1995. She was living at her parental home.
6. The trial Court upon considering the pleadings and evidence led by the parties came to the conclusion that the Appellant failed to prove that he was subjected to cruelty by the Respondent, consequently, dismissed the suit.
7. Learned counsel for the Appellant would submit that the Respondent was mentally ill and she was treated by one Dr. Prakash Shukla. As per the report of the Dr. Prakash Shukla she was suffering from Paranoid Schizophrenia disease. However, the trial Court did not consider the evidence adduced by the Appellant and impugned judgment passed against the law and evidence available on record. Respondent always used to quarrel with the Appellant and family members of the Appellant. The order passed by the learned trial Court is illegal and liable to be set aside.
8. Learned counsel for the Respondent opposes the submissions made by

Appellant counsel and argued that the Appellant committed cruelty against Respondent without any reason. Respondent never misbehaved and never committed any physical or mental cruelty against the Appellant. Appellant on the baseless ground filed a petition for divorce. The learned trial Court passed the judgment on the basis of evidence available on record and rightly dismissed the petition of Appellant.

9. Two questions for determination of this Court are as follows:

- i. Whether the judgment of trial Court dismissing the petition of Appellant is legally sustainable?
- ii. Whether any interference is required in the impugned judgment?

10. It is admitted facts between the parties that their marriage took place in May 1986 and out of the wedlock two issues were born. After the marriage in 1986 Appellant filed divorce petition under Section 13(1) (i-a) of the Hindu Marriage Act on the ground of cruelty on 11.02.2002.

11. Appellant in his favour examined 5 witnesses and Respondent examined 4 witnesses in her favour. First allegation made by the Appellant is that the Respondent was mentally ill from the date of marriage. But, there is no evidence on record that the Respondent was mentally ill before the marriage. Appellant got himself examined as (AW-1) and stated in examination in chief that from the first day of marriage he found that the Respondent is abnormal, she was mentally ill and misbehaving with the Appellant and family members of the Appellant.

12. Kerabai (AW-2) was maid servant of Appellant she has stated in her statement in paragraph 2 that Respondent used to behave like mentally ill person and utter abusive words. But, no specific allegation made by Hira Ram (AW-1) as to an Kerabai (AW-2) as to what type of cruelty Respondent

used to commit. According, to Jhumuk Lal Dewangan (AW-3) he had never seen any quarrel between the parties. Hira Ram (AW-1) also stated in his statement that society meeting was arranged on 03.09.2001 at Bhatgaon in which a decision was taken that another effort should be made by the couple to live happily. But even this effort went in vain. Birju Patnayak (AW-4) admitted in his cross-examination that he has no knowledge about the dispute between the Appellant and Respondent likewise he has no knowledge about the mental illness of the Respondent. Considering the entire evidence of the Appellant there is no specific evidence given by the Appellant that Respondent cause mental or physical cruelty to him.

13.As per Ex.D-1/C and Ex.D-2/C Respondent was graduate from B.A. course and she was doing teaching job on ad-hoc basis at G.V.P. Public School and she was doing job from 01.07.1994 to 30.04.1999 and her work is satisfactory and is proved by experience certificate Ex.D-4. After the marriage she was living with the Appellant from 1986 to 1999 and blessed with two children and both the children were aged about 14 years and 12 ½ years on the filing of the petition and both the children were in a position to give evidence before the Court regarding conduct of her mother, but both the children have not been examined by Appellant.

14.Dr. Prakash Shukla (AW-5) is examined by Appellant and he was stated that in the month of August 2000 he treated the Respondent. However, after 09.02.2001 the Respondent was not brought for treatment.

15.Respondent examined NAW-3 who has stated in his statement that she had been living with the Appellant for near about 14 to 15 years and during this period she never misbehaved with the Appellant and did not commit any physical and mental cruelty against the Appellant. Appellant could not prove this fact that the Respondent was mentally ill from the date of marriage and

there is no specific allegation proved by the Appellant regarding the mental illness of the Respondent as per Dr. Prakash Shukla (AW-5) report. Respondent witness NAW-2 stated in his statement in para 3 that the Appellant convened that meeting of the society saying that the Respondent was mentally ill.

16. According, to NAW-4 Appellant used to force the Respondent to take medicine without consulting any Doctor.

17. Considering the entire evidence of both the parties, this Court is of the opinion that the Appellant has failed to prove that the Respondent was mentally ill after marriage or prior to the marriage. Respondent had been living with the Appellant near about 14 to 15 years, but no allegation made by the Appellant during this time regarding her mental illness and only after August 2000. Appellant started alleging against the Respondent that she is mentally ill. She completed her higher education which shows that she was not a mentally ill person as alleged by the Appellant. Appellant has failed to prove his case that Respondent was mentally ill and as caused such mental and physical cruelty to him.

18. On the basis of aforesaid discussion this Court is of the opinion that the trial Court was fully justified in dismissing the suit of the Appellant. Therefore, no interference in the impugned judgment is warranted by this Court. Accordingly, the appeal being without any substance is hereby dismissed.

19. Decree drawn up accordingly.

Sd/-
(Gautam Chourdiya)
Judge