

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 6 of 2018

Nandkumar Khare, Aged about 32 years, S/o Shri Baldau, R/o.
Village Nargoda, P.S. Seepat, District Bilaspur (C.G.)

---- Applicant

Versus

Smt. Durga Bai, Aged about 26 years, W/o. Shri Nandkumar
Khare, resident of village Nargoda, P.S. Seepat, Bilaspur
District Bilaspur, presently resided at Nawagaon, P.S. Seepat,
District Bilaspur (C.G.)

---- Respondents

For the Applicant :- Mr. Ali Asgar, Advocate
For the Respondent :- Mr. Rahul Tamaskar, Advocate.

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,
Order on Board By
Prashant Kumar Mishra, J.

15.11.2018

1. With the consent of the parties the matter is heard finally at the admission stage.
2. The appellant would assail the legality and validity of the impugned judgment and decree passed by the Family Court dismissing his suit for grant of divorce on the ground of insanity of the respondent wife as well as on the ground of desertion.
3. According to the plaintiff, the parties were married on 11.05.2011. However, the respondent wife remained in her parental house till *Gauna* ceremony was performed on the date of Rath Yatra festival in the same year. During the period the parties resided together, the appellant became aware about the

insanity of the respondent wife for which she was medically treated but her condition did not improve. The respondent/wife went to her parental house about 2½ years prior to the date of moving the divorce petition and despite several efforts of the appellant she did not join the matrimonial chord, therefore, the suit for divorce has been preferred.

4. The respondent wife denied the plaint averment in its entirety. According to her, it was the appellant who was subjecting her to cruelty coupled with negligence in performing his marital obligations. She would state that the appellant was not willing to live with her, therefore, a false ground of insanity and desertion has been raised.
5. Admittedly, the appellant/husband has not examined any medical expert under whom the respondent/wife received treatment for her mental disorder. The treatment slip Ex.P-1 has been proved by the appellant himself and not by the physician who has issued the prescription slip.
6. Dr. A.K. Gupta who has issued the prescription slip appears to be a neuron-psychiatric and drug de-addition expert but in the absence of the said physician being examined, mere prescription slip would not be a sufficient proof of the insanity of the respondent/wife. Neither in the petition for divorce nor in his Court statement the appellant would state that because of insanity of the respondent/wife it has become difficult for him to live a happy and peaceful married life. Such averment is necessary for seeking divorce on the ground of mental disorder

or insanity because mere mental imbalance does not constitute a ground for divorce.

7. Similarly, in respect of the averment regarding the ground of desertion it is to be seen that the plaintiff as well as the affidavit of the appellant filed under order 18 Rule 4 CPC would aver that about 2½ -3 years prior to the date of moving the divorce petition the respondent/wife had gone back to her marital house and during this period the appellant made all possible efforts to bring her back but she refused to join his company. However, there is no averment that the respondent has abandoned the institution of marriage and there is no element of *animus deserendi* appearing from the conduct of the respondent/wife. Mere living separately does not attract the ground of desertion unless the desertion is with an intent to abandon the company of the appellant forever.
8. In our considered opinion the trial Court has not committed any illegality while dismissing the appellant's suit for divorce. There is no substance in this appeal which fails and is hereby dismissed at the admission stage itself.

Sd/-
Judge

Prashant Kumar Mishra

Sd/-
Judge

Vimla Singh Kapoor