

HIGH COURT OF CHHATTISGARH, BILASPUR**RESERVED ON 16-5-2018****DELIVERED ON 18-5-2018****FAM No. 120 of 2014**

(Arising out of order and decree dated 30-10-2014 of the 1st Addl. District Judge, Baloda Bazar, Distt. Baloda Bazar in Civil Suit (Hindu Marriage Act) No. 37-A/2012)

Dalendra Kannauje S/o Late Dhurendra Kannauje aged about 38 Years R/o Community Health Centre, Bhatapara, P.S. And Post- Bhatapara, Distt. Baloda Bazar-Bhatapara C.G.

---- Appellant**Versus**

Smt.Reena Kannauje W/o Dalendra Kannauje aged about 33 Years R/o Ward No. 12, Palari, P.S. And Post- Palari, Distt. Baloda Bazar-Bhatapara C.G.

---- Respondent

For Appellant	:	Shri Manoj Paranjpe and Shri Prasoon Agrawal, Advocate
For Respondent	:	Shri Ravindra Agrawal, Advocate

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

1. In this appeal, the challenge is levied to the order and decree dated 30.10.2014 of the First Additional District Judge, Baloda Bazar, CG in Civil Suit (Hindu Marriage Act) No. 37A/2012 whereby and whereunder he dismissed the divorce petition filed by appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act, 1955') against respondent-wife.

2. This is admitted by the respondent that marriage of both parties was solemnized on 14.05.2002 in accordance with customary rites and rituals, in the wedlock two children have born namely Dipendra born on 04.02.2003 and Vaibhav born on 29.02.2004, she is living in his house yet now, he had given her notice for divorce.

3. In brief, appellant's case is that after marriage the respondent used to abuse and beat him. She had given threatening to implicate him in false dowry case. There is no conjugal life between them since back two years to 16.08.2012.

4. In brief, respondent's case is that after marriage the appellant was harassing her on account of demand of dowry. He himself is escaping from leading conjugal life, she is always ready to lead conjugal life

5. After conclusion of the trial, the trial Court passed the aforesaid order and decree. Being aggrieved, the appellant has preferred this appeal.

6. Shri Manoj Paranjpe, counsel for the appellant vehemently argued that the trial Court did not appreciate the evidence in its proper perspective. Thus, the impugned order and decree may be set aside and divorce may be granted to the appellant.

7. Shri Ravindra Agrawal, counsel for the respondent argued that the order and decree passed by the trial Court are in accordance with law. The impugned order and decree do not call for any interference by this Court, thus the appeal may be set aside.

8. **Points for determination** : -

There are following points for determination in this case -

(1) Whether after solemnization of marriage, the respondent had treated the appellant with cruelty ?

(2) Whether the respondent has deserted the appellant for a continuous period of not less than two years immediately preceding presentation of the petition without reasonable cause and without the consent or against the wish of him ?

(3) Whether the appellant is entitled to get the decree of divorce on the grounds of cruelty and desertion ?

(4) Relief and costs.

Point for determination No. 1 : Finding with reasons :-

9. AW 1 Dalendra Kannauje says in para 2, 3 and 5 of his statement given on oath that after marriage the respondent used to abuse and beat him. She had given threatening to implicate him in false dowry case. There is no conjugal life between them since back two years to 16.08.2012.

10. AW 2 Hiralal Khunte and AW 3 Deendayal say in para 2 of their statements given on oath that after marriage the respondent was abusing and beating the appellant.

11. NAW 1 Smt. Reena Kannauje, NAW 2 Hemant Kumar Rajak who is brother of the respondent, in paras 1, 2 and 4 of their statement given on oath say that after marriage the appellant was harassing the respondent on account of demand of dowry. He is deliberately not leading conjugal life though she was always ready to discharge her marital obligation.

12. NAW 3 Smt. Suruj Bai who is aunt of the appellant says in para 1 of her statement given on oath that after marriage the appellant was harassing the respondent.

13. In **G.V.N. Kameswara Rao vs. G. Jabilli; M.L.J. 2002 (1) 317**, the Hon'ble Supreme Court has held as under :

“Cruelty can be said to be an act committed with an intention to cause sufferings to the opposite party and it has become intolerable for other to suffer any longer and to live together is impossible. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances. Austerity of temper, rudeness of language, occasional outburst of anger may not amount to cruelty, though it may amount to misconduct.”

14. In **Prabhash Saxena v Smt. Ranjana Saxena** {Mrr.L.J. 2002 (1) 502}

Hon'ble Delhi High Court has laid down the following judicial precedent:

“A consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 13(1)(ia) of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of other party.”

15. Shri Manoj Paranjpe, Counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Samar Ghosh -v- Jaya Ghosh** [(2007) 4 SCC 511] para 30 of which is quoted below :-

“30. The High Court has seriously erred in not appreciating the evidence on record in a proper perspective. The respondent's refusal to cohabit has been proved beyond doubt. The High Court's finding that the husband and wife might be sleeping in separate rooms did not lead to a conclusion that they did not cohabit and to justify this by saying that the respondent was highly educated and holding a high post was entirely unsustainable. Once the respondent accepted to become the wife of the appellant, she had to respect the marital bond and discharge the obligations of marital life.”

16. Shri Paranjpe further placed reliance on a decision of this Court in the matter of **Som Kumar Bahidar -v- Smt. Jyoti** passed in FAM No. 102/2012 dated 13-9-2017, para 12 of which reads thus :-

“12. The principle is, thus, settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation

which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the plaintiff to live with the other side and the behavior of such degree which amounts to cruelty.”

17. Shri Ravindra Agrawal, counsel for the respondent placed reliance on a decision of Hon'ble Supreme Court in the matter of **Gurbax Singh -v- Harminder Kaur** [(2010) 14 SCC 301] relevant portion of para 12 is reproduced below :-

“**12. In Samar Ghosh v. Jaya Ghosh** (supra) a three-Judge Bench of this Court while considering Section 13(1)(i-a) of the Act laid down certain guidelines. The analysis and ultimate conclusion are relevant which reads as under:

“XXX XXX XXX

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

XXX XXX XXX

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.....”

18. He further placed reliance on a decision of Hon'ble Supreme Court in the matter of **J.A. Nanda -v- Smt. Veena Nanda** [(1988) Sup SCC 112] relevant portion of para 7 is quoted below :-

“7.Sometimes the temperament of the parties may not be conducive to each other which may result in petty quarrels and troubles although it was contended by the appellant that he had to suffer various ailments on account of this kind of behaviour meted out to him by the wife but it could not be held on the basis of any material

that ailment of the appellant was the direct result of her (respondent's) conduct. The Division Bench therefore was right in coming to the conclusion that there is no material to come to the conclusion that the respondent treated the appellant with such cruelty as would entitle him to a decree for divorce.”

19. Shri Agrawal also placed reliance on a decision of Hon'ble Supreme Court in the matter of **A. Anil Kumar -v- Vanishri A.** [(2009) AIR (Karnataka) 201] para 22 of which is reproduced below :-

“22. In the case of **Savitri Pandey Vs. Prem Chandra** [(2002) 2SCC 73], the Hon'ble Supreme Court observed that cruelty must be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct, which would in general, be dangerous for a spouse to live with the other.”

20. This is not the appellant's case that the respondent had allegedly refused to lead the conjugal life or to discharge her marital obligation though he was inclined to lead the conjugal life.

21. AW 1 Dalendra Kannauje says in para 26 and 32 during his cross-examination that this is true that the quarrel was such which ordinarily happens between husband and wife, he does not go to sleep to the place where the respondent resides.

22. AW 2 Leelaram Khunte says in para No. 17 during his cross-examination that this is true that main cause of the dispute was relationship of appellant with some woman. AW 3 Deendayal says in para 11 during his cross-examination that this is true that quarrel was happened between the respondent and her mother in law on account of domestic work. Moreover, the appellant has given suggestion to NAW 1 Smt. Reena kannauje during her cross-examination in para 13 that she was quarreling on account of petty matters.

23. AW 2 Leelaram Khunte and AW 3 Deendayal say in para 3 that the old mother of the appellant cooks meals and does domestic work.

24. The appellant has failed to prove any report lodged by him in any police station wherein, it has been mentioned that after marriage the respondent allegedly used to abuse and beat him. She had allegedly given threatening to implicate him in false dowry case. Moreover, he has failed to prove any document of their community wherein said facts have been mentioned. For not doing so he has not offered any plausible explanation.

25. Looking to the above mentioned facts and circumstances, this Court finds that the appellant does not get any help from notice Ex. A-1 regarding this point for determination.

26. Looking to the above mentioned facts and circumstances, this Court finds that appellant does not get any help from above mentioned judicial precedent laid down in **Samar Ghosh** (supra) regarding this point for determination and above mentioned judicial precedent laid down in **G.V.N. Kameswara Rao** (supra), **Prabhash Saxena** (supra), **Som Kumar Bahidar** (supra), **Gurubax Singh** (supra), **J.L. Nanda** (supra) and **A. Anil Kumar**(supra) are applicable against the appellant and in favour of the respondent regarding this point for determination.

27. After the appreciation of the evidence discussed herebefore this Court disbelieves on aforesaid statements of para 2 and 3 of AW 1 Dalendra Kannoje, para 2 of AW 2 Leelaram Khunte and AW 3 Deendayal, and believes on statements of para 1, 2 and 4 of NAW 1 Smt. Reena Kannoje and NAW 2 Hemant Kumar Rajak, para 1 of NAW 3 Smt. Suruj Bai, and this Court finds that the appellant does not get any help from the aforesaid statement of para 5 of AW 1 Dalendra Kannauje.

28. After the appreciation of the evidence discussed hereinbefore, this Court finds that the respondent had not treated the appellant with cruelty. Thus, this Court decides point for determination No. 1 accordingly.

Point for determination No. 2 : Finding with reasons :-

29. The trial Court has not framed issue regarding desertion, though the trial Court ought to have done it. The trial Court has given the finding on issue of desertion. The evidence available on record shows that the appellant and the respondent have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions of Order 41 Rule 24 of the Civil Procedure Code, 1908 (in brevity 'the CPC'), this Court finds that it may pronounce the judgment in this appeal.

30. In **Gurinder Singh v Bhupinder Caur** {Mrr.L.J. 2008 (1) 261} Hon'ble Punjab and Haryana High Court has laid down the following judicial precedent: -

“Desertion means the separation of one spouse from other with an intention of bringing cohabitation permanently to an end without reasonable cause a consent of the other spouse and with an intention not return or resume cohabitation. Mere severance of relation or separation without desertion is not sufficient. Desertion is not walking out of a house but is withdrawn from a home. Desertion consists in withdrawn not from a place but from the state of thing.”

31. Hon'ble Supreme Court in **Adhyatma Bhattar Alwar v Adhyatma Bhattar Sri Devi** {2002 (1) SCC 308} has laid down the following judicial precedent:-

“For the offence of desertion two essential conditions must be there;

(1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Two elements are essential so far as the deserted spouse is concerned; (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial house to form the necessary intention.”

32. In the case in hand, the case of the appellant is that respondent is residing in his house in a separate room. This is not his case that she had left his house and living in a separate place. Living in his house and not leaving his house itself indicates that the respondent is willing to cohabit with him. This has been earlier decided that she has not committed any cruelty with the appellant and he was harassing her and he himself had escaped from leading the conjugal life.

33. After appreciation of the evidence discussed herebefore, this Court finds that there is no such evidence on record which shows that respondent has an intention to bring cohabitation permanently to an end (*animus deserendi*) without reasonable cause and without consent of appellant. Respondent has an intention not to return or resume cohabitation with appellant.

34. Looking to the above mentioned facts and circumstances, material placed on record this Court finds that aforesaid judicial precedents laid down in **Gurinder Singh** (supra) and **Adhyatma Bhattar Alwar** (supra) are applicable against the appellant and in favour of the respondent regarding this point for determination.

35. After appreciation of the evidence discussed herebefore this Court finds that the respondent has not deserted the appellant for a continuous period of not less than two years immediately preceding presentation of the petition without reasonable cause and without the consent or against the wish of him. Thus this Court decides point for determination No. 2

accordingly.

Point for determination No. 3 : Finding with reasons :

36. This has been earlier decided that the appellant has failed to prove the grounds of cruelty and desertation thus, he is not entitled to get divorce on the grounds of cruelty and desertion. Thus this Court decides the point for determination No. 3 accordingly.

Point for determination No. 4 : Finding with reasons :

37. After the complete appreciation of the evidence discussed herebefore, this Court finds that appeal is devoid of merit and deserves to be set aside. Thus, the impugned order and decree of the trial Court are affirmed to the above extent. The appeal is dismissed.

38. Appellant shall bear his own costs as well as costs of respondent.

39. A decree be drawn up accordingly.

**Sd/-
(Sharad Kumar Gupta)
JUDGE**