

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 213 of 2017**

- Smt. Usha Chandra W/o Ramanath Chandra, D/o Madholal Chandra, Aged About 38 Years By Caste Chandranahu, R/o Sonadula, Thana And Tahsil Malkharoda, District Janjgir Champa Chhattisgarh At Present R/o Jhoolkadam Sakti, Tahsil Sakti District Janjgir Champa Chhattisgarh

---- Appellant**Versus**

- Ramanath Chandra S/o Lakhanlal Chandra, Aged About 41 Years By Caste Chandranahu, R/o Sonadula, Tahsil And District Malkharoda, District Janjgir Champa Chhattisgarh

---- Respondent

For Appellant	:	Shri Parag Kotecha, Advocate
For Respondent	:	Shri P. Chetan Kumar, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****10/09/2018****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment and decree dated 06/11/2017 passed by the Family Court, Sakti, District – Janjgir – Champa in Civil Suit No.05-A/16 by which, the respondent's application under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights, has been allowed and decree of restitution of conjugal rights has been granted in his favour and as against the appellant.

2. The respondent filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights on the pleadings *inter alia* that he was married to the defendant (appellant herein) in the month of May, 2002 and they were blessed with

two children, both being daughters aged 10 years and 8 years. The parties reside in the joint family and the respondent loves his wife, children and has never subjected his wife to maltreatment but the wife was not inclined to reside in joint family and was insisting her husband to leave the village and move towards urban area which led to lot of disputes. He was threatened of false implication on the allegation of dowry and time and again, the wife used to go to her parental house and finally, in the month of August, 2014, she left the matrimonial house without informing anybody and since then, she is residing separately with children, though without any cause. It was further pleaded that though, the respondent/ husband made attempts to bring his wife back and for that purpose, he had taken respectable members and inhabitants of his community but his wife and her parents refused. In the community meeting also, despite notice, the wife or her father did not attend. Again, an attempt was made to bring her back in September, 2016 but she again refused to come back. On these pleadings, prayer for restitution of conjugal rights was made. The appellant / defendant opposed the prayer and stated that she was maltreated by father-in-law and uncle-in-law and she was also subjected to physical violence and in the name of having not brought sufficient dowry, she was frequently maltreated. It was further pleaded that when she was pregnant, she was not properly taken care of and no treatment was done. Above all, an allegation was made in the written statement that her husband, after having intercourse, used to compel her to cohabit with her uncle-in-law and the uncle-in-law was also having an evil eye on her and when finally, she refused to succumb to his demands, she was assaulted and unceremoniously shunted out from the matrimonial house.

3. On the basis of the pleadings of the parties, learned Trial Court framed following issues -

1. क्या अनावेदिका/पत्नी ने बिना किसी युक्तियुक्त कारण के अपने सहचर्य सुख से आवेदक / पति को प्रत्याहरित कर दी है ?

2. क्या आवेदक दाम्पत्य जीवन की पुनर्स्थापना का आज़्ञप्ति प्राप्त करने का अधिकारी है ?
3. वाद व्यय एवं सहायता ?

4. Learned Trial Court rejected wife's version of she being subjected to cruelty or compelled to have sexual intercourse with her uncle-in-law and held that there was no reasonable cause for her to refuse to reside with her husband and on this finding, decree was granted.

5. Learned counsel for the appellant, assailing legality and validity of impugned judgment and decree, contended before us that the allegations leveled by the appellant / wife are quite serious and in a situation like this, no one can expect the wife to reside with her husband when the elderly member of his family has an evil eye and over and above that, the husband is party to such immoral attempt. He would further submit that this specific plea was not only taken in the written statement but the appellant in her evidence, categorically stated this fact and the learned Trial Court ought to have appreciated it in proper perspective rather than rejecting the plea on untenable grounds of vagueness of the pleadings with regard to time, date and place of such immoral demands. It is further argued that the very fact that the wife was living with her husband for a long time and suddenly leaving the matrimonial house, itself is an important circumstance to lay credence to the story in defence that for unavoidable reasons, the wife cannot be compelled to reside with her husband in an atmosphere where one of the elderly member of the family is keen to have intercourse with her and she has no protection by her own husband.

6. On the other hand, learned counsel for the respondent opposes and submits that the plea taken by the wife is not only improbable but an afterthought and that is the reason why pleadings are vague. It is submitted that there are no specific details with the regard to the incident and conduct of respondent and her father which

completely belies such a version.

7. We have heard learned counsel for the parties and perused the records.

8. It is not in dispute that since August, 2014, the wife is not residing with her husband. As the pleadings go, marriage was solemnized between the parties in the month of May, 2002 and they are also blessed with two children being two girls aged 10 years and 8 years. Pleadings in para 4 of the plaint that the parties reside in a joint family is also not in dispute. The defendant's plea of she being subjected to cruelty does not appear to be probable because she never made any such allegation in any Fora for long 12 years while remaining in the matrimonial relationship and blessed with two children during 12 years. Neither in the written statement nor in the Court statement, the wife has come out with a plea that she ever made any such complaint either to her parents or anybody else that she was subjected to cruelty by her husband or any member of the family in the matrimonial house.

9. The allegation, however, that her uncle-in-law had an evil eye on her and at times, made attempts to establish physical relation with her, are required to be carefully scrutinized on the basis of pleadings and evidence on record.

10. To begin with, the allegation that in a joint family, the uncle-in-law will try to establish illicit relation with his daughter-in-law though not improbable, but appears to be difficult to believe, unless proved by clinching evidence. Not only this, the wife's allegation that the husband, after having intercourse, used to compel her to have relation with her uncle-in-law is still more improbable as the allegations, though serious, are at the same time stand on a different footing.

Little improbability attached to the allegation is with the circumstance that it is not a case that right from the beginning, after marriage in the year 2002, the wife was facing this situation. The parties had been living together for 12 years and had

two children also.

11. In para 6 of the written statement, though such allegations have been leveled, specific details have not been given as to when this happened. Though the period of marital relationship is spread over from 2002 to 2014, specific details are required to be made whether it used to be an affair right from the marriage or developed only in the year 2014. But the pleadings in this regard are vague. Ramanath (DW1), has also not given any specific details in this regard. In para 1 of her affidavit, it has been stated that in a joint family, she was never treated properly and she used to be frequently harassed by the father-in-law and uncle-in-law who used to scold her by saying that she came from a poor family background and brought insufficient dowry. The manner in which the statement is made in her affidavit shows that it is alleged to have been practiced throughout her matrimonial life from 2002 to 2014 but then, there is no specific allegation of the nature that her uncle-in-law had an evil eye on her. In para 2 of her affidavit, she has stated that finally, she was shunted out from the matrimonial house in August, 2004. The allegation of she being compelled to cohabit with her uncle-in-law is not specific with regard to the date, month, year etc. In para 8 of her cross examination, she states that she was not shunted out of the matrimonial house after any assault whereas this has been her case in her pleading that she was assaulted and thrown out from the matrimonial house. She admits in para 11 of her cross examination that her husband is a simple person. Her father Madholal Chandra (DW2), in his cross examination, admits that her husband never asked his wife to cohabit with her uncle-in-law.

12. The plaintiff has come out with the pleadings and has also led evidence that when his wife left the matrimonial house, he made an attempt to bring her back and a community meeting was also held but she or her family member did not attend. In the written statement, the appellant has stated in para 7 that when her father

received notice, he took stand that the defendant does not reside with him and resides at Sakti and for that reason, he did not attend the community meeting. Therefore, receipt of notice is not disputed but then, in her evidence, she has stated that she had not received any notice. Her father, Madholal Chandra (DW2), however, takes a different stand and admits that a community meeting was organised in village - Odekara concerning the dispute of the parties and he also admits that he did not attend the meeting. He was socially boycotted. In his cross examination, he has also admitted that his daughter and son-in-law were living happily married life and blessed with two children.

13. In view of the aforesaid evidence which has come on record, the allegations made by the appellant, though serious, if weighed on the scales of probability, are liable to be rejected and plea of the husband that the wife left the matrimonial house appears to be more probable.

14. In view of the above, we are not inclined to interfere with the impugned judgment and decree of restitution of conjugal rights as in our opinion, the appellant has failed to establish reasonable cause for living separately from her husband.

The appeal is, accordingly, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Gautam Chourdiya)
Judge