

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 118 of 2015

- Smt. Aaliv Fransis, W/o Samuel Sashilal, aged about 40 years, Caste Isai (Christian), R/o Marwahi, Police Station & Tahsil Marwahi, District Bilaspur (C.G.)

---- Appellant

Versus

- Semual Shashilal, S/o Satish Kumar Lal, aged about 44 years, Caste Isai (Christian), R/o Kanti Mansarovar Colony, Madhav Nagar, Room No.305, Senior MIG Katni, District Katni (M.P.)

---- Respondent

For Appellant : Shri Vinod Kumar Tekam, Advocate
For Respondent : None appears

SB : Hon'ble Shri Justice Sharad Kumar Gupta

17.04.2018

- 1) Challenge in this appeal is levied to the judgment and decree dated 08.07.2015 of the Additional District Judge, Pendra Road, District Bilaspur in Civil Suit No.8A/2014, whereby and whereunder he dismissed the Appellant's suit for dissolution of the marriage, filed under Section 10 of the Divorce Act, 1869 (hereinafter referred to as 'the Act, 1869').
- 2) In brief, the Appellant's case is that her marriage was solemnized with the Respondent prior to 11 years from 03.03.2014. In their wedlock two children have born. Respondent was subjecting her with cruelty on account of contracting second marriage. In 2006, he had ousted her alongwith children. Now, she is living in her matrimonial house in village Marwahi.
- 3) Respondent was *ex-parte* in trial Court and had not filed written statement.

- 4) After completion of the trial, the trial Court pronounced the aforesaid judgment and decree. Being aggrieved, the Appellant preferred this appeal.
- 5) Shri Vinod Tekam, learned counsel for the Appellant, argued that trial Court has not properly appreciated the evidence. There is no chance of reunion. Thus, aforesaid judgment and decree may be set aside and marriage solemnized between the Appellant and the Respondent may be dissolved by a decree of divorce.
- 6) In this appeal nobody appears on behalf of the Respondent though notice has been served upon him.

Points for determination :-

There are following points for determination in this case :-

- (1) Whether the Respondent has treated the Appellant with such cruelty as to cause a reasonable apprehension in the mind of the Appellant that it would be harmful or injuries for her to live with the Respondent ?
- (2) Whether Appellant is entitled to get the decree of divorce on ground of cruelty ?
- (3) Relief and costs.

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

- 7) The trial Court did not framed the issue regarding alleged cruelty, for determination though it ought to have been done by the trial Court. The evidence available on record shows that the Appellant has

adduced evidence regarding this point for determination. The evidence available on record is sufficient for enabling the Court to pronounce the judgment. Non-framing of the 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, this Court finds that it may pronounce the judgment in this appeal.

- 8) A.W.-1, Smt. Aaliv Fransis says in paragraph 3 of her statement given on oath that Respondent was harassing her on account of contracting second marriage.
- 9) A.W.-2, Smt. Julie Fransis, who is the elder sister of the Appellant, says in paragraph 2 of her statement given on oath that Respondent was harassing the Appellant on account of bringing second wife.
- 10) A.W.-3, Reshamlal, who is resident of village Marwahi, says in paragraph 3 of his statement given on oath that Respondent was harassing the Appellant.
- 11) 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.”

- 12) In **Prabhash Saxena vs. Smt. Ranjana Saxena; M.L.J. 2002(1) 502**, the Division Bench of Delhi High Court has held as under :-

“A consistent course of conduct infliction, 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.”

- 13) The Appellant has not examined any person who may be neighbour of Respondent or any person of the same locality, who may say about the alleged cruelty. Moreover, Appellant has not proved any letter wherein alleged cruelty has been mentioned. Moreover, she has not proved any report lodged in any police station, wherein such alleged cruelty has been mentioned. Moreover, she has not proved any document of their community, wherein such facts have been mentioned. Moreover, she has also not proved any notice given by her to Respondent, wherein such facts have been mentioned. For not doing so, there is no explanation from her. Looking to these circumstances, this Court disbelieves aforesaid statements of A.W.-1, Smt. Aaliv Fransis, A.W.-2, Smt. Julie Fransis and A.W.-3, Reshamlal.
- 14) After appreciation of the evidence discussed herebefore and looking to the aforesaid judicial precedents in **G.V.N. Kameswara Rao** (supra) and **Prabhash Saxena** (supra), this Court finds that the Appellant failed to prove that the Respondent has treated her with such cruelty as to cause a reasonable apprehension in the mind of her that it would be harmful or injuries for her to live with the Respondent. Thus, this Court decides point for determination No.1 accordingly.

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

- 15) This has been earlier decided that Appellant failed to prove that Respondent has allegedly subjected her with cruelty.

- 16) Shri Vinod Kumar Tekam, learned counsel for the Appellant, placed reliance in the decision of the Division Bench of this Court in **Smt. Vijaya Laxmi Soni vs. Raj Kumar Soni; 2009 (2) M.P.H.T. 64 (CG)** in which the learned Division Bench of this Court has held that after passing decree of judicial separation, parties did not try for restitution of conjugal rights, no chance of any reunion, hence, dissolution of marriage by decree of divorce was the only remedy for the welfare of parties.
- 17) In the case in hand, no decree of judicial separation was passed. The facts of this case are different. Thus, the Appellant does not get any help from the judicial precedent **Smt. Vijaya Laxmi Soni** (supra).
- 18) After appreciation of the evidence discussed herebefore, this Court finds that the Appellant is not entitled to get the decree of divorce on ground of cruelty. Thus, this Court decides point for determination No.2 accordingly.

Point for determination No.3 - Findings with reasons :-

- 19) After the complete appreciation of the evidence discussed herebefore, this Court finds that there is no substance in this appeal. Thus, the impugned judgment and decree of the trial Court are hereby affirmed as to aforesaid extent. The appeal deserves to be and is hereby dismissed.
- 20) No order as to costs.
- 21) Decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
JUDGE