

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25-4-2018****Delivered on 8-5-2018****First Appeal (Misc.) No. 210 of 2017**

(Arising out of the judgment and decree dated 30-6-2017 of the 2nd Additional District Judge, Surajpur (CG) in Civil Suit No. 65A/2012)

Ramnarayan son of late Shivram, aged about 32 years, caste : Chamar, R/o. Village Anrokha, PS Bhatgaon, Tahsil Bhaiyathan, Distt. Surajpur (CG)

Appellant**Versus**

Smt. Gayatri W/o. Arjun Caste Chamar, aged about 30 years, R/o. Village Lakhanpur, Police Station and Tahsil Bhaiyathan, Distt. Surajpur (CG)

Respondent

For Appellant	:	Shri Pushpendra Kumar Patel, Advocate.
For Respondent	:	None, though served.

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

1. In this appeal, the challenge is levied to the judgment and decree dated 30-6-2017 of the 2nd Additional District Judge, Surajpur Distt. Surajpur in Civil Suit No. 65/2012 whereby and whereunder he dismissed the divorce petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act, 1955') against respondent-wife.

2. In brief, the appellant's case is that his marriage was solemnized with respondent in the year 1992 in accordance with Hindu rites and rituals, they lived together for two years, at the time of the marriage they were minor. Near about 17 years ago from the date of the divorce petition the respondent performed second marriage with one Arjun and he himself also performed second marriage with one Smt. Lalita. Thus, divorce may be granted.

3. In brief, the respondent's case is that her marriage was not solemnized with the appellant. She has not performed second marriage.
4. After conclusion of the trial, the trial Court passed the aforesaid judgment and decree. Being aggrieved, appellant preferred this appeal.
5. Shri Pushpendra Kumar Patel, counsel for the appellant vehemently argued that the trial Court did not appreciate the evidence in proper perspective. Appellant's evidence was unrebutted. Thus, the impugned judgment and decree may be set aside and divorce may be granted to the appellant.
6. No one appears for the respondent at the time of hearing though served.
7. It would be pertinent to mention the provisions of Section 23(2) of the Act of 1955 which reads as under :-

“23. Decree in proceedings.—

(2)Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties :

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of Section 13.”

8. In the matter of **Jagraj Singh -v- Birpal Kaur** [2007(2) SCC 564], Hon'ble Supreme Court held in paras 11 and 26 that :-

“11.Bald assertion of the appellant- husband that no court of law can direct a party to remain personally present cannot be accepted. Apart from the matters under the Hindu Marriage Act, 1955, even in civil

matters also, a court of law may order either the plaintiff or the defendant to remain personally present in court. For instance, Rule 1 of Order III of the Code of Civil Procedure, 1908 allows appearance of party in person or through his recognized agent or by an advocate. The proviso to the said rule, however, declares that any such appearance shall, if the court so directs, be made by the *party in person*. In appropriate cases, a civil court may direct a party to the suit —plaintiff or defendant, to appear in person.”

“26. A court is expected, *nay*, bound, to make all attempts and endeavours for reconciliation. Sub-section (2) of Section 23 is a salutary provision exhibiting the intention of Parliament requiring the court “in the first instance” to make every endeavour to bring about a reconciliation between the parties. If in the light of the above intention and paramount consideration of the legislature in enacting such provision, an order is passed by a matrimonial court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contended that the court has no such power and in case a party to a proceeding does not remain present, at the most, the court can proceed to decide the case *ex parte* against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and unworkable, defeating the laudable object of reconciliation in matrimonial disputes. The contention of the appellant, therefore, cannot be upheld.”

9. In the case in hand, it is unequivocal from the record of the trial Court that it has not made attempt to compel the attendance of respondent to bring about a conciliation before proceeding *ex-parte* though the trial Court ought to have done. Instead of doing so, trial Court proceeded *exparte* against the respondent on 10-5-2017 due to non-appearance of him. Moreover, the trial Court has not framed issues regarding the marriage, voluntary sexual intercourse by respondent with any person other than her spouse. Moreover, the trial Court has not given finding with reason regarding voluntary sexual intercourse by respondent with any person other than her spouse. Moreover, respondent has pleaded in para 2 of her application under Section 24 of the

Act of 1955 that she is married wife of the appellant but the trial Court ignored this material fact and given the finding that there is no evidence regarding alleged marriage of the appellant and the respondent.

10. Looking to the above mentioned facts and circumstances of the case, this Court sets aside the impugned judgment and decree passed by the trial Court and finds that in the case in hand, retrial is necessary. Thus, this Court remits the case to the trial Court with the directions that it, in the light of aforesaid provisions of Section 23(2) of the Act of 1955 and the judicial precedent laid down in **Jagraj Singh** (supra), and the observation made by this Court hereinabove, shall proceed to determine the suit in accordance with law and procedure within outer limit of two months from receipt of this order. Evidence recorded during the original trial shall subject to all just exceptions, be evidence during the trial after remand.

11. The appellant is directed to appear before the trial Court on 16-5-2018. Record be sent to the trial Court immediately.

12. The appeal is disposed of with above directions.

13. No order as to costs.

Sd/-
(Sharad Kumar Gupta)
JUDGE
8-5-2018