

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal (M) No. 218 of 2017**

*(Arising out of judgment dated 30.01.2017 passed in Civil Suit No. 235-A/2016 by the Additional Principal Judge, Family Court, Bilaspur )*

Smt. Rashmi Yadav W/o Suman Yadav, aged about 25 years, R/o JP Vihar, Mangla PS Civil Lines, District Bilaspur, Chhattisgarh.

---- Appellant

**Versus**

Mr. Suman Yadav S/o Laxmi Prasad, aged about 27 years, R/o B-65, Adarsh Nagar, Kusmunda, PS Kusmunda, District Sarguja, Chhattisgarh.

---- Respondent

**AND****First Appeal (M) No. 93 of 2017**

*(Arising out of judgment dated 30.01.2017 passed in Civil Suit No. 235-A/2016 by the Additional Principal Judge, Family Court, Bilaspur )*

Suman Yadav S/o Laxmi Prasad, aged about 27 years, R/o B-65, Adarsh Nagar, Kusmunda, PS Kusmunda, District Sarguja, Chhattisgarh

---- Appellant

**Versus**

Smt. Rashmi Yadav W/o Suman Yadav, aged about 25 years, R/o JP Vihar, Mangla PS Civil Lines, District Bilaspur, Chhattisgarh.

---- Respondent

---

|                        |                                      |
|------------------------|--------------------------------------|
| For Appellant-Wife     | : Shri Avinash Chand Sahu, Advocate. |
| For Respondent-Husband | : Shri N.L.Soni, Advocate.           |

---

**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri Sharad Kumar Gupta, J.**

**Judgment on Board**

**Per Thottathil B. Radhakrishnan, Chief Justice**

**01/05/2018**

1. These two appeals arise from an order of the Family Court. The wife has filed First Appeal (M) No. 218 of 2017 and the husband has filed First Appeal (M) No. 93 of 2017.

2. We have heard the learned counsel for the parties.
3. The wife filed an application for divorce. Though the husband had filed pleadings, he was absent at trial and hence, that application was decreed *ex-parte*.
4. The husband's appeal is against the order granting *ex-parte* decree of divorce coupled with an order for returning certain articles; which issue has also been answered without trial and contest.
5. The wife's appeal is on the plea that the Court below has not passed an order for permanent alimony. Though, Section 25 of the Hindu Marriage Act, 1955 postulates the requirement of an application for the purpose of grant of permanent alimony and maintenance, as it stands, there is no clear pleading or application by the wife in the proceedings before the Court below, to that extent. We do not express anything finally on that now, having regard to the nature of this order.
6. The couple married on 24.04.2015. The application for divorce was filed in August, 2016. It has been decreed *ex-parte* in January, 2017. The plea of the wife seeking divorce appears to be that the husband has committed cruelty. The wife is employed. The husband appears to have his own avocation. We see lot of avenues of a probable settlement of this litigation possibly by restoring the matrimonial home; or otherwise ending this litigation through mediation. On the totality of the facts and circumstances, we are of the view that this is an eminently fit case which should go for *de novo* consideration at the hands of the Family Court.
7. We are also satisfied that the impugned decree as granted by the Family Court has to be set aside paving way for reconsideration of the matter

since a default decree by itself is insufficient on the facts of the case in hand.

8. In the result, these appeals are allowed setting aside the impugned order dated 30.01.2017 passed in Civil Suit No. 235-A/2016 by the Additional Principal Judge, Family Court, Bilaspur and remitting the said proceedings for reconsideration by that Court in accordance with law. This will leave the parties with liberty to seek amendment of pleadings, if necessary, and also to place further evidence on record, if so advised. The learned Family Judge will make earnest efforts in terms of the Family Courts Act, 1984 and Section 89 of the Code of Civil Procedure, 1908 to pursue avenues of mediation for a meaningful resolution of this litigation.
9. The parties are directed to mark their appearance before the Additional Principal Judge, Family Court, Bilaspur on 20.06.2018.

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

Sd/-

(Sharad Kumar Gupta)  
**JUDGE**