

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 10 of 2010**

Yuvraj Kushwaha S/o Dileshwar Kuswaha, Aged About 46 Years, Caste Koir, R/o Village Banja, Tahsil Surajpur, District Surguja, C.G.

---- Appellant

Versus

Smt. Niraspati W/o Yuvraj, after remarriage present husband Hari Kewat, aged about 40 years, caste Koir, R/o Village Banja, Tahsil Surajpur, District Surguja, C.G.

---- Respondent

For the Appellant	:	Shri D. Kushwaha, Advocate appears on behalf of Shri Pushpendra Kumar Patel, Advocate
For the Respondent	:	None

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment On Board**18/04/2018**

1. Challenge in this appeal is levied to the order dated 10/11/2009 of First Additional District Judge, Surajpur, District Surguja (C.G.), whereby and whereunder he dismissed the application filed under Section 25 (3) of the Hindu Marriage Act (hereafter called as '*Act, 1955*') by the appellant.
2. This is admitted by the respondent that Additional District Judge, Ambikapur had passed an order on 27/07/1987 in Case No. 38A/84, wherein he ordered appellant that he shall pay the allowance for maintenance @ Rs.200/- per month to the respondent.

3. In brief, the appellant's case is that one year prior to 13/11/2006 the respondent has re-married with Hari Kewat, resident of village Bhaiyathan (Harrapara). She is leading conjugal life with Hari Kewat, thus, the aforesaid order may be set-aside.
4. In brief, the respondent case is that appellant has made false allegation to harass her. Thus, the aforesaid application may be dismissed.
5. After the conclusion of the trial, trial Court decided the application as aforesaid.
6. Shri D. Kushwaha, counsel for the appellant argued that the appellant has proved re-marriage of the respondent, thus the aforesaid order is bad in eye of law and deserves to be set-aside.
7. First and foremost question for adjudication before me is that whether respondent has re-married with Hari Kewat?
8. AW-1 Yuvraj Kushwaha says in para 3 of his statement given on oath that three years ago the respondent has performed second marriage with Hari Kewat.
9. AW-2 Uday Kumar, who is the real nephew of the appellant says in para 3 of his statement given on oath that non-applicant had told him that she is leading the conjugal life with a person resident of village Bhaiyathan (Harrapara).

10. AW-1 Yuvraj Kushwaha says in para 7 during his cross-examination that respondent is living in village Banja. Village Banja is the living village of the appellant. AW-2 Uday Kumar says in para 2 in examination-in-chief that sometime respondent come in village Banja and lives there, this is true that she had not seen the respondent in the house of Hari Kewat. Moreover, appellant has not examined any neighbour of Hari Kewat, any other person of the locality of village Bhaiyathan. Moreover, appellant has failed to prove any letter wherein said fact has been mentioned. Moreover, appellant has failed to prove any report wherein such fact has been mentioned. Moreover, appellant has failed to prove any document of meeting of their community wherein said fact has been mentioned. Moreover, the appellant is failed to prove any notice wherein said fact has been mentioned. In these circumstances, this Court disbelieves the aforesaid statements of para 3 of AW-1 Yuvraj Kushwaha and AW-2 Uday Kumar.

11. After the appreciation of evidence discussed herein-above, this Court finds that appellant is failed to prove that respondent has re-married with Hari Kewat.

12. This has been earlier decided that the respondent has not leading conjugal life with Hari Kewat. Thus, impugned judgment and decree of the trial Court are not liable to set-aside.

13. After the complete appreciation of the evidence discussed here

before, this Court finds that appeal is devoid of merit. Thus, the impugned judgment and decree passed by the trial Court are affirmed and the appeal is hereby dismissed.

14. No order as to costs.

15. A decree be drawn-up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge