

**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 17.04.2018****Delivered on 01.05.2018****First Appeal (Misc.) No. 261 of 2016**

- Kunjbihari Soni S/o Shri Rambhajan Soni, Aged About 50 Years R/o Ramgopal Tiwari Ward Mungeli, Tehsil And District Mungeli, Chhattisgarh

**---- Appellant****Versus**

- Smt. Mamta Soni W/o Shri Kunjbihari Soni, D/o Girdhari Prasad Soni, Aged About 46 Years At Present Resident Of C/o Suryakant Soni, Near Chanakya Bhawan, Gali No.1, Fafadeeh Raipur, District Raipur, Chhattisgarh.

**---- Respondent**

---

|                |   |                                              |
|----------------|---|----------------------------------------------|
| For Appellant  | : | Shri P.P. Sahu and Shri R.K. Pali, Advocates |
| For Respondent | : | None.                                        |

---

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

1. In this appeal, the challenge is levied to the judgment and decree dated 7-10-2016 of the Additional Judge to the Court of Additional District Judge, Mungeli, Chhattisgarh in Civil Suit No. 23-A/2015 whereby and whereunder he dismissed the divorce petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'Act of 1955') against respondent-wife.

2. In brief, appellant's case is that his marriage was solemnized with the respondent 15-16 years prior to the date of petition i.e. 20-7-2015. In the wedlock one daughter Ku. Roshni alias Babli was born, now she is 11 years old. After the marriage she used to go frequently in her maternal house. She was harassing him and his family members making false allegations. She

often used to say that she does not like him. She used to threat saying that she will die by burning herself and falsely implicate him and his entire family. She had left his house in year 2012 after making quarrel. He had filed an application under Section 9 of the Act of 1955 on 3-1-2013 which was dismissed on account of not pressing the same because a compromise was taken place between them out of the Court. She herself filed an application under Section 9 of the Act of 1955 in the Family Court, Raipur which was also dismissed because she did not press the same. She is living separately from him for the last 3 years before filing the divorce petition.

3. The respondent was ex-parte in trial Court and she had not filed the written statement.

4. After conclusion of the trial, the trial Court passed the aforesaid judgment and decree. Being aggrieved, the appellant preferred this appeal.

5. Shri P.P. Sahu, Counsel for the appellant vehemently argued that the trial Court did not consider that respondent herself left the company of the appellant. She had also withdrawn her application filed under Section 9 of the Act of 1955. The trial Court did not appreciate the evidence in proper perspective. 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. **Points for determination** : -

There are following points for determination in this Case -

(1) Whether after solemnization of the marriage, the respondent had treated the appellant with cruelty ?

- (2) Whether respondent has deserted appellant for a continuous period of not less than two years immediately preceding the presentation of the petition without reasonable cause and without the consent or against the wish of him ?
- (3) Whether appellant is entitled to get the decree of divorce on the ground of cruelty and desertion ?
- (4) Relief and costs.

**Point for determination No. 1 : Finding with reasons :-**

8. 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.”

9. In **Prabhash Saxena v Smt. Ranjana Saxena** {Mrr.L.J. 2002 (1) 502} Hon'ble Delhi High Court has laid down the following judicial precedent:

“A consistent course of conduct inflicting 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.”

10. AW 1 Kunjbihari Soni does not say clearly and strongly as per his own case that, she was allegedly harassing him and his family members making false allegations. She used to say that she does not like him. She allegedly used to threat saying that she will die by burning herself and falsely implicate

him and his entire family. Moreover, he has not proved any letter wherein said facts have been mentioned. Moreover, he has also not proved any report lodged by him in any police station wherein said facts have been mentioned. Moreover, he has not proved any document of their community wherein said facts have been mentioned. Moreover, he has also not proved any notice given by him to her wherein said facts have been mentioned. For not doing so, there is no explanation from him.

11. Looking to the above mentioned facts and circumstances, this Court finds that above mentioned judicial precedents laid down in **G.V.N. Kameswara Rao (supra)** and **Prabhash Saxena (supra)** are applicable against the appellant's case regarding this point for determination.

12. After appreciation of the evidence discussed herebefore this Court finds that the appellant failed to prove that after solemnization of the marriage, the respondent had treated him with cruelty. Thus, this Court decides point for determination No.1 accordingly.\_

**Point for determination No. 2 : Finding with reasons :-**

13. In **Gurinder Singh v Bhupinder Caur** {Mrr.L.J. 2008 (1) 261} Hon'ble Punjab and Haryana High Court has laid down the following judicial precedent: -

“Desertion means the separation of one spouse from other with an intention of bringing cohabitation permanently to an end without reasonable cause a consent of the other spouse and with an intention not return or resume cohabitation. Mere severance of relation or separation without desertion is not sufficient. Desertion is not walking out of a house but is withdrawn from a home. Desertion consists in withdrawn not from a place but from the state of thing.”

14. Hon'ble Supreme Court in **Adhyatma Bhattar Alwar v Adhyatma Bhattar Sri Devi** {2002 (1) SCC 308} has laid following judicial precedent:-

“For the offence of desertion two essential conditions must be there; (1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Two elements are essential so far as the deserted spouse is concerned; (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial house to form the necessary intention.”

15. AW1 Kunjbihari Soni says in para 2 of his statement given on oath on 17-3-2016 that respondent did not return back in his house after year 2012. They are not in contact since last 3 – 3½ years.

16. As per para 2 of the application under Section 9 of the Act, 1955 dated 3-1-2013 Ex. A/2, 5-6 months ago mother of the respondent had taken back her but did not send her back.

17. AW2 Ganesh Soni who is the real brother of the appellant in para 2 and AW3 Vinod Kumar Mishra in para 3 say that in 2013 respondent had come in the appellant's house and lived for 10-12 days. Appellant has filed divorce petition on 20-7-2015. AW2 Ganesh Soni and AW3 Vinod Kumar Mishra do not say at least the month of year 2013 when respondent again left appellant's house. In these circumstances, this Court disbelieves aforesaid statement of para 2 of AW1 Kunjbihari Soni, Ex. A/2, in this reference that allegedly at least continuously two years back from the date of the presentation of divorce petition, respondent is living separately from appellant.

18. Looking to the above mentioned facts and circumstances, this Court finds that above mentioned judicial precedents laid down in **Gurinder Singh (supra)** and **Adhyatma Bhattar Alwar (supra)** are applicable against the appellant's case regarding this point for determination.

19. After appreciation of the evidence discussed herebefore, this Court finds that there is no such evidence on record which shows that respondent

has an intention to bring cohabitation permanently to an end (*animus deserandi*) without reasonable cause and consent of appellant. Respondent has an intention not to return or resume cohabitation with appellant.

20. After appreciation of the evidence discussed herebefore this Court finds that appellant failed to prove that respondent has deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition without reasonable and without the consent or against the wish of him . Thus, this Court decides point for determination No.2 accordingly.

**Point for determination No. 3 : Finding with reasons :-**

21. This has been earlier decided that appellant failed to prove grounds of cruelty and desertion.

22. Learned counsel for the appellant placed reliance on a decision of Hon'ble Supreme Court in the matter of **K. Srinivas Rao -v- D.A. Deepa** [(2013) 5 SCC 226], para 30 and 31 are quoted below :-

“30. It is also to be noted that the appellant-husband and the respondent wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh [(2007) 4 SCC 511], if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments

and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree. ”

23. If for the sake for argument it is deemed that respondent has allegedly treated the appellant with cruelty, though this Court does not find so, then, this is the appellant's case that he had filed an application for restitution of conjugal rights on 3-1-2013 after allegedly going back of the respondent to her parental house, this conduct of the appellant shows that he had allegedly condoned the cruelty.

24. Looking to the above mentioned facts and circumstances, this Court finds that the appellant does not get any help from the aforesaid judicial precedent laid down in **K. Srinivas Rao (surpa)**.

25. After appreciation of the evidence discussed herebefore this Court finds that appellant is not entitled to get the decree of divorce on the grounds of cruelty and desertion. Thus, this Court decides point for determination No. 3 accordingly.

**Point for determination No. 4 : Finding with reasons :-**

26. After the complete appreciation of the evidence discussed herebefore, this Court finds that appeal is devoid of merit and deserves to be set aside. Thus, the impugned judgment and decree of the trial Court are affirmed as to above extent. The appeal is dismissed.

27. Appellant shall bear his own costs as well as costs of respondent.

28. A decree be drawn up accordingly.

Sd/-

(Sharad Kumar Gupta)  
JUDGE

kishore