

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 52 of 2017**

Parwati Prajapati W/o Hublal Prajapati, D/o Shyamlal Chakradhari, Present R/o Amarkantak Road, Purana Gaurela, P.S. Gaurela, Tahsil Pendra Road, District Bilaspur, Chhattisgarh, Chhattisgarh
---- Appellant

Versus

Hublal Prajapati S/o Babulal Prajapati, Aged About 24 Years Caste Kumhar, R/o Village Lalpur, Tahsil Pendra Road, District Bilaspur, Chhattisgarh, Chhattisgarh
---- Respondent

For Appellant	: Shri Sidhartha Bajpai and Shri Pravin Kumar Tulsyan, Advocates.
For Respondent	: None though served.

Hon'ble Shri Sharad Kumar Gupta, Judge
Judgment on Board

19/04/2018

1. In this appeal, challenge levied is to the judgment and decree dated 30.1.2017 of the Additional Sessions Judge, Pendra Road, District Bilaspur in Civil Suit No.8-A of 2016 whereby and whereunder, he ordered the Appellant-wife that she shall lead the conjugal life with the Respondent-husband.
2. This is admitted by the Appellant-wife that marriage of both the parties was solemnized on 20.5.2012 in village Old Gaurela in accordance with Hindu rights and rituals and she is living in her maternal house.
3. In brief, the case of the Respondent-husband is that, near about one year and two months prior to the date 26.2.2016, father of the Appellant-wife had taken back the Appellant-wife to his house. He had tried for send back the Appellant-wife to her matrimonial house but she refused to return to her Respondent-husband. On 13.2.2016, he again with some persons had gone to Appellant's maternal house to take back her but she told that she had converted herself into

Christian religion and if the Respondent-husband is ready to convert himself to Christian religion and would oust the idols of Hindu God and Goddess, then only she will go with him to his house.

4. In brief, the case of the Appellant-wife is that the Respondent-husband and his parents used to beat her.

5. After conclusion of the trial, the trial Court passed the aforesaid judgment and decree. Being aggrieved, the Appellant-wife has preferred this appeal.

6. Shri Pravin Kumar Tulsyan, learned counsel for the Appellant-wife argued that the trial Court has not appreciated the evidence led by the Appellant-wife. There is enough material on record which shows that the Respondent-husband and his family members were harassing the Appellant-wife. Thus, the aforesaid judgment and decree may be set aside.

7. None appeared on behalf of the Respondent-husband, though notice was served on him.

8. **Points for determination:-**

There are following points for determination in this case:-

1. Whether the Appellant-wife has, without any reasonable excuse, withdrawn from the society of the Respondent-husband ?
2. Whether the Respondent-husband is entitled to get the decree of restitution of conjugal right ?
3. Relief and Costs ?

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

9. Mahesh Prasad (AW-1) says in paragraph-4 of his statement given on oath

that he and some senior persons persuaded the Appellant-wife in the meeting held on 13.2.2016 but she had refused to live with the Respondent-husband and told that she had opted the Cristian religion and if the Respondent-husband is ready to opt the Cristian religion and oust the idols of Hindu God and Goddess, then only she will lead the conjugal life with the Respondent-husband, otherwise not.

10. Kemla Prasad (AW-2) says in paragraph-4 of his statement given on oath that he and some other persons had gone to maternal house of the Appellant-wife but the Appellant-wife had refused to return back with the Respondent-husband.

11. The Respondent-Hublal Prajapati (AW-3) says in paragraph-6 of his statement given on oath that in the meeting held on 13.2.2016, the Appellant-wife had told that she had opted Cristian religion, if the he is ready to opt the Cristian religion and oust the Hindu God and Goddess, then only she will give her company, otherwise not.

12. Appellant-Parwati Prajapati (NAW-1) says in paragraph-3 of her statement given on oath that the Respondent-husband and his family members have subjected her with cruelty.

13. Shyamlal Chakradhari (NAW-2), who is father of the Appellant-wife, says in paragraph-2 of his statement given on oath that the Respondent-husband and his family members were harassing his daughter.

14. In case of **Smt. Ratna Prabha Das v. Dulal Shyam Choudhary, AIR 2004 Jhar 24**, Hon'ble Jharkhand High Court has held as under:-

“8.The evidence brought on the record by the appellant-wife does not at all substantiate her case regarding any just and reasonable cause to disassociate herself from her respondent-husband for not leading conjugal life with him and in the facts and circumstances of this case, the reasons

assigned by the appellant-wife for withdrawing from the society of her husband is neither grave nor weighty nor convincing and it cannot be said that the appellant-wife has withdrawn from the society of her husband for any just and reasonable cause. I, therefore, see no reason to disagree with the finding of the learned Court below in respect thereof. Therefore, there is no illegality in the impugned judgment requiring an interference therein.

9. There is no merit in this appeal and it fails. The impugned judgment of the learned Court below is hereby affirmed. The appeal is dismissed. The appellant-wife is directed to lead her conjugal life with her respondent-husband in her matrimonial home forthwith.....”

15. In case of *P. Rajkumar Bagmar v. Swathi Rajesh Kumar Bagmar*, AIR 2008 Mad 36, Hon'ble Madras High Court has held as under:-

“10.When either of the spouse, without any reasonable cause withdrawn from the society of the other, the aggrieved party may apply by petition for restitution of conjugal rights and the Court on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted may decree restitution of conjugal rights accordingly. The explanation to the said section speaks that where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. The explanation means that the spouse alleges reasonable excuse has to prove it. I endorse the view expressed by the learned Single Judge in the case reported in (Smt. Jyothi Pai vs. P.N. Pratap Kumar Pai) AIR 1987 Karnataka 241 that explanation to Section 9 does not make any change and that initial burden to prove the allegation on the basis of which restitution of conjugal rights is sought is on the person who comes to the Court. In this case, the petitioner, who approached the Court for a judgment and decree in his favour on the assertion that

the respondent had withdrawn from his society without any reasonable excuse. The burden of proof in the proceedings lies on the petitioner to prove those averments made by him to get a decree in his favour. Hence, the petitioner who alleges withdrawal without reasonable cause failed to lead evidence, he may not be in a position to satisfy the Court regarding the truth in the pleadings, hence, he has to lead evidence, then the burden will be shifted to the respondent to establish reasonable excuse. Even when the respondent made counter claim under Section 23-A of the Hindu Marriage Act, it does not make any change in the position of law.”

16. Appellant-Parwati Prajapati (NAW-1) says in paragraph-12 during her cross-examination that, it is true that her parents had told that they will let her study and also get her service. Shyamlal Chakradhari (NAW-2) says in paragraph-8 during his cross-examination that it is true that on every Sunday, her daughter used to go to Church and put a locket of Christian religion upon her neck.

17. Appellant-wife has not examined any neighbour of Respondent-husband who could state that allegedly, the Respondent-husband and his parents used to harass her. The Appellant-wife has failed to prove any letter wherein said fact has been mentioned. Moreover, she failed to prove any report lodged by her in any Police Station wherein the said facts have been mentioned. Moreover, she has failed to prove any document of their community wherein the said fact has been mentioned. She has further failed to prove any notice given by her to the Respondent-husband wherein the said fact has been mentioned. That being so, there is no explanation from her.

18. Looking to the above mentioned facts and circumstances of the case, the aforesaid judicial precedents laid down in **Smt. Ratna Das** (supra) and **P. Rajkumar Bagmar** (supra) are applicable against the Appellant-wife and in favour of the Respondent-husband regarding this point for determination.

19. Looking to the aforesaid facts and circumstances of the case, this Court believes the statements of paragraph-4 of Mahesh Prasad (AW-1), paragraph-4 of Kemla Prasad (AW-2), paragraph-6 of Hublal Prajapati (AW-3) and disbelieves the statements of paragraph-3 of Parwati Prajapati (NAW-1) and paragraph-2 of Shyamlal Chakradhari (NAW-2). After appreciation of the statements discussed hereinabove, this Court finds that the Respondent-husband has succeeded to prove that the Appellant-wife, without any reasonable excuse has withdrawn from the society of her husband-Respondent. Thus, this Court decides point for determination No.1 accordingly.

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

20. This has been earlier decided that the Respondent-husband succeeded to prove that the Appellant-wife has withdrawn herself from his society without any reasonable excuse, thus, the Respondent-husband is entitled for the decree for restitution of conjugal right. Thus, this Court decides point for determination No.2 accordingly.

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

21. After complete appreciation of the evidence, this Court finds that the appeal is devoid of merit, thus, the impugned judgment and decree of the trial Court is affirmed. The appeal is dismissed.

22. The Appellant-wife shall bear her own costs as well as the costs of the Respondent-husband.

23. Decree shall be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
JUDGE