

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 99 of 2016

- Sajendra Kumar S/o Garibaram Sahu, Aged About 31 Years R/o Ghoghopuri Bharda, District Balod, Chhattisgarh ---- **Appellant**

Versus

- Sandhya W/o Sajendra Kumar Sahu, Aged About 25 Years R/o Village Nayapara, Ward No. 3, Near Vinay Talkies, Balod, District Baloda, Chhattisgarh ---- **Respondent**

For Appellant	: Shri BP Singh, Advocate
For Respondent	: Shri Vikas Dubey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

14.03.2018

1) This is an appeal against the dismissal of an application for divorce on the ground of desertion. The husband is the appellant. Heard the learned counsel for the parties.

2) What is challenged is the dismissal of the application for divorce for non-appearance. It can never be disputed that such an order can be subjected to an application for restoration of the dismissed application, invoking Order 9 Rule 9 of the Code of Civil Procedure.

3) Nonetheless, the appellant paid Rs.5,000/- as costs to condone the delay in instituting this appeal. The learned counsel for the respondent-Wife says that his client is willing to cohabit and there is no question of desertion.

4) This litigation having reached to the stage of this appeal instituted sometime in early 2016, we think that, having regard to the totality of the facts, we would consider this as an appeal against the decree of dismissal by default, without insisting on an application for restoration, being filed before the Family Court.

5) The learned counsel for the respondent submits in answer to our query that the appellant is providing some maintenance to the respondent. However, no litigation expenses were fixed.

6) Having considered the plea of the appellant and the respondent, we are of the view that the dismissal of the application for divorce on default needs to be set aside and those proceedings deserve to be restored to file on condition that the appellant pays the respondent an amount of Rs.20,000/- within one month from now, it will be adjusted against litigation costs till now and the appellant shall continue to pay the respondent litigation costs @ Rs.2,000/- per month. If such payment of Rs.20,000/- is made, the Family Court will take back the application for divorce to file and consider it and decide on it in accordance with law.

7) The amount of Rs.20,000/- shall be paid, by a Demand Draft, payable in favour of the respondent, within the time, as ordered above.

8) This appeal is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge