

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 24 of 2013

Smt. Amarjeet Kaur W/o Bhupendra Singh Aged About 50 Years R/o Qtr.No.
LD12, Padumnagar, Bhilai-3, Tah. And Distt. Durg C.G.

---- Appellant

Versus

Bhupendra Singh S/o Gurumukh Singh Aged About 55 Years R/o Samta
Colony, B.M.Y. Charoda, Bhilai, P.S. Purani Bhilai, Distt. Durg C.G.,

---- Respondent

For Appellant	:	Mr. Jitendra Gupta, Advocate
For Respondent	:	Mr. Satish Chand Verma, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order

21/06/2018

Per Manindra Mohan Shrivastava, J

1. This appeal is directed against the judgment and decree dated 11.03.2013 passed by the First Additional Principal Judge, Family Court, Durg (CG) passed in Civil Suit No.12A/2012, by which, the plaintiff's suit has been decreed and a decree of divorce has been granted.

2. The respondent-plaintiff filed an application (suit) before the Family Court seeking a decree of divorce on the pleadings that the plaintiff Bhupendra Singh and defendant Amarjeet Kaur were married according to Sikh rituals on 22nd of April, 1990 and the marriage was solemnized at Bhilai, District Durg. It was pleaded that the plaintiff was earlier married but there was a divorce with his first wife whereafter he contacted second marriage with the defendant. It was further pleaded that for about 3 years from the date of marriage, the marital life was very cordial. The plaintiff utilized entire saving for purchase of a house in the name of his wife and he also purchased a plot and gifted to his wife. Further, it was pleaded that when the defendant fell sick, she was accorded proper treatment but defendant started making unwarranted allegation and moved an application under Section 125 Cr.P.C. for grant of maintenance stating that the plaintiff and his sisters-in-law had made a conspiracy under which, the defendant was subjected to tubectomy operation. False allegations

of plaintiff repeatedly assaulting his wife in intoxicated condition were made. The defendant was not prepared to take household responsibility, domestic responsibility and used to indulge in physical violence and assault on the plaintiff. It was also pleaded that as and when plaintiff used to request the defendant to prepare food, defendant used to insult and assault him. The defendant is of erratic behaviour and indulged in taunting and even used to tear off plaintiff's cloths. The defendant also lodged a false report against plaintiff causing severe mental cruelty. The defendant is not satisfied with treatments provided to her. She is non-cooperative and indulges in abuses, assault, insult. It was also pleaded that on 7th of August, 2007, the defendant deserted the plaintiff and thereafter occupied plaintiff's house at Padumnagar and dispossessed the plaintiff, due to which, the plaintiff is presently residing in a tenanted premise. It was also pleaded that defendant had been frequently making complaints to the departmental officer of the plaintiff which caused severe mental agony. Due to all these acts of cruelty and desertion, the plaintiff had to file suit seeking decree of divorce.

3. On the other hand, the defendant denied the alleged pleadings of harassment, cruelty, assault and stated that it is plaintiff, who has indulged in assault and it was only when she was deserted, the defendant had filed an application under Section 125 of Cr.P.C. for grant of maintenance. It was also stated that the plaintiff assaults and abuses in intoxicated condition and the defendant has been shunted out of the matrimonial house.

4. On the basis of the pleadings of the parties, learned trial Court framed five issues which included an issue as to whether the defendant subjected the plaintiff to physical and mental cruelty and also whether the defendant is mentally sick. An issue was also framed whether the plaintiff used to abuse and assault the defendant in intoxicated condition.

5. Learned Trial Court, after having allowed the parties to lead oral and documentary evidence, delivered impugned judgment holding that the defendant subjected the plaintiff to physical and mental cruelty. It has been held that the defendant has dispossessed the plaintiff from the house. Though, it has been held that defendant is not mentally sick, the plaintiff has been granted decree of divorce. Learned Trial Court also held that the defendant failed to prove that she was assaulted by the plaintiff in intoxicated condition.

6. Assailing correctness and validity of the impugned judgment and decree, learned counsel for the defendant would submit that the learned Trial Court has committed error of law and fact both in holding that the plaintiff was subjected to

physical and mental cruelty by the defendant. He would submit that the plaintiff's story that he was subjected to cruelty and assault by the defendant is highly improbable as the plaintiff is a husband. He would submit that on the contrary, it has been proved from the evidence on record that it was the plaintiff who used to subject the defendant to physical violence by assaulting her intoxicated condition because of which, the defendant has sustained a lot of physical and mental cruelty. Even then, as she loves her husband, despite all the cruelties, she expressed that she is willing to reside with her husband.

7. Learned counsel for the plaintiff would submit that the learned Trial Court has granted a decree in favour of plaintiff upon scrutiny of evidence led by the plaintiff which prove that defendant-wife subjected the plaintiff-husband to physical as well as mental cruelty by not only insulting, assaults, abuses and taunts but also by making false complaints and allegations so much so that the defendant lodged a report in the police station against the plaintiff on fabricated ground which cause severe mental agony and harassment of the plaintiff. The defendant dispossessed the plaintiff from his house and she is engaged in making false complaints against the plaintiff to his superior in the office, giving rise to mental stress and that the parties are residing separately since 2007. Therefore, the judgment and decree of divorce passed by the Trial Court does not warrant any interference.

8. After hearing learned counsel for the parties and perusing the records, following points arise for consideration in this appeal :

(i) Whether the defendant subjected the plaintiff to cruelty so as to entitle the plaintiff to get a decree of divorce on the ground of cruelty ?

(ii) Whether the plaintiff subjected the defendant to cruelty ?

9. On the aspect of cruelty, the plaintiff has pleaded that the defendant has not only entered into quarrel but has assaulted the plaintiff on many occasions. His further plea is that though plaintiff, out of love and affection for his wife, purchased a house, due to continuous ill-treatment and quarrel, the plaintiff suffered lot of mental agony and finally, the plaintiff has been ousted from his own house. The plaintiff has stated, in his affidavit, that there used to be quarrel between the husband and wife and on many occasions, the plaintiff was assaulted by the defendant. He has also stated, in his affidavit, that in the house purchased by the plaintiff, the defendant has put her lock and plaintiff has been ousted from that house and started residing other rental accommodation. He has stated that because of repeated act of assault, abuses and ouster from the house, the plaintiff has been subjected to cruelty. In support of his case, the plaintiff has examined one Jyoti Prasad Mishra, who has deposed that he knows the defendant and plaintiff as he was their neighbour. He has

stated that there used to be very frequent quarrel and the defendant used to assault her husband many times and he had to save him. He states that on more than one occasion, the plaintiff was repeatedly assaulted by defendant and further that she has locked the house where the plaintiff was residing and he has been ousted from that house.

10. The defendant has also made an allegation in her pleadings and in her Court statement that it is the plaintiff, who has subjected her to cruelty by stating that the plaintiff is habitual drunkard. He used to quarrel and assault. According to her, her husband has left her in the year 2007 without any sufficient cause and residing separately. She also states that as she was not blessed with any issue despite 22 years of marriage, she having adopted a child, the plaintiff is also raising this issue for dispute and quarrel between the parties. One Shaukat Ali has been examined in defence witness to support the case of the defendant that the plaintiff is drunkard and he often enters into quarrel and assaults his wife.

11. While both the parties have led evidence of cruelty against each other supported by their respective witnesses, as far as plaintiff's witness Jyoti Prasad Mishra is concerned, he has deposed of his personal knowledge that he has seen the defendant repeatedly assaulting plaintiff.

12. On the other hand, defendant's witness Shaukat Ali talks of quarrel and assault as told to him but he does not say that he, himself, seen the incident.

13. Moreover, the defendant has admitted, in her evidence, that the plaintiff had to leave the house on 22 occasions because of the quarrel. It is to be noted that the defendant continues in the residence and the plaintiff had to leave the house. It is not in dispute that the house is owned by the plaintiff. Therefore, plaintiff's pleadings and evidence that the plaintiff has been evicted from his own house by defendant and that he is residing in a rental accommodation appears to be more probable.

14. The finding of fact recorded by the learned Trial Court on the above consideration, therefore, does not warrant any interference as the same is based on due and proper appreciation of evidence on record with regard to cruelty. The appeal is, therefore, dismissed. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge