

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 19.04.2018****Delivered on 03.05.2018****First Appeal (Misc.) No. 4 of 2015**

Balgovind S/o Ramnath, aged about 31 years, Caste – Rajwar Occupation-Service (S.E.C.L.), R/O Village- Katkona, Post- Katkona, P.S. Patna, Tah. Baikunthpur, Distt. Korla , Chhattisgarh, Civil and Revenue Distt. Korla, Chhattisgarh

---- Appellant**Versus**

Fulkunwar W/o Balgovind, aged about 30 years, Caste – Rajwar, R/o Village-Namadgiri, P.S. and Tah. Surajpur, Distt. Surajpur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri A.K. prasad, Advocate
For Respondent	:	Shri Sushil Dubey, Advocate

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

1. In this appeal, challenge is levied to the judgment and decree dated 16.10.2014 of the Second Additional District Judge, Surajpur, Chhattisgarh in Civil Suit No. 11-A/2013 whereby and whereunder he dismissed the divorce petition filed by appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act of 1955') against respondent-wife.

2. This is admitted by the respondent that her marriage was solemnized with the appellant in accordance with customary rites and rituals in the year 1998 at village – Namadgiri, both the parties are Hindu by religion and governed from Hindu law, after the marriage she resided in his house at village Katkona, in the wedlock three daughters were born who are residing with her, she is residing separately with him in her maternal house since 2008, she had filed an application for allowance for maintenance in the Court

of the Chief Judicial Magistrate, Surajpur who ordered him that he shall pay total allowance for the maintenance for her and their daughters Rs. 4,000/- pm.

3. In brief, appellant's case is that after the marriage respondent was harassing him and his family members, she used to live maximum period in her maternal house without his permission, she was not doing domestic works. He had tried to bring her back but she refused to live with him.

4. In nutshell, respondent's case is that when she was carrying pregnancy of 9 months, the appellant started to harass her saying that she always procreates girls, he has kept a woman namely Anita. He ousted her after beating.

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

6. Shri A.K. Prasad, counsel for the appellant vehemently argued that 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.

7. Shri Sushil Dubey, counsel for the respondent argued that the impugned judgment and decree are in accordance with law. The trial Court has given the finding on the evidence available on record. Thus, the appeal may be dismissed.

8. **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 the respondent has deserted the 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 grounds of cruelty and desertion ?

(4) Relief and costs.

Points for determination No. 1 & 2 : Finding with reasons :-

9. Looking to the convenience points for determination No. 1 & 2 are disposed off simultaneously.

10. AW1 Balgovind says in para 3 of his statement given on oath that, after the marriage the respondent was harassing him and his family members, she used to live maximum period in her maternal house without his permission, she was not doing domestic works.

11. NAW1 Fulkunwar says in para 2 of her statement given on oath that, when she was carrying pregnancy of 9 months, the appellant started to harass her saying that she always procreates girls, he has kept a woman namely Anita. He ousted her after beating.

12. NAW2 Sampurnanand Tiwari says in paras 2 and 3 that the appellant had told that he has performed second marriage. He himself had seen the another wife of the appellant in his house.

13. Shri A.K. Prasad, counsel for the appellant cited a decision of Hon'ble Supreme Court in **Adhyatma Bhattar Alwar -v- Adhyatma Bhattar Sri Devi [AIR 2002 SC 88]**, relevant portion of para 6 of the judgment is quoted below:-

“Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation

permanently to an end (animus deserendi). Similarly, 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 home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.”

14. He further cited the decision of Hon'ble Supreme Court in the matter of **Seth Ramdayal Jat v. Laxmi Prasad [(2009) 11 SCC 545]**, relevant portion of para 13 is as under:-

“13 A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever.”

15. He cited a decision of the M.P. High Court in the matter of **Basudev Jatav v. Smt. Rekha Jatav [AIR 2015 M.P. 176]**, paras 11 & 12 of which are as under:-

“11. "Cruelty" is a ground that matrimonial relief has been provided in the statute. The concept of "cruelty" has varied from time to time, from place to place, from individual to individual in its obligation of social status of the person involved and the economic conditions and other matters. It is the antithesis to the natural love and affection between husband and wife. It is destructive of the soft feeling of concern for each other and sense of togetherness, which is the bedrock of the normal matrimonial relationship.

12. Willful refusal to fulfill matrimonial obligations in certain circumstances can also amount to "cruelty".

16. He further cited a decision of Delhi High Court in the matter of **AS v SNS [AIR 2016 Delhi 43]**, para 19 of which is as under:-

“19. For such a defence to be available, the appellant-wife should have led cogent evidence to establish that the respondent-husband created such circumstances, that it was not possible

for the appellant-wife to reside in the matrimonial home. She has failed to lead any cogent evidence to that effect.”

17. Shri Sushil Dubey, counsel for the respondent cited a decision of this Court in **Mahesh Kumar Sinha v. Smt. Yamini Sinha [2013 (3) CGLJ 105 (DB)]**, para 9 of which is as under:-

“9. The learned Judge, Family Court, has considered the entire material available on record and has held that it was not established by the plaintiff that the defendant has treated him with cruelty and on this account a decree of divorce may be passed. The above finding appears to be fully justified in the facts and circumstances of the case and material available on record. The marital ties are not to be broken on trivial issues between husband and wife. Cruelty is a question of fact which has to be proved by quoting instances and leading positive evidence to prove those instances. Vague and general allegations against the behaviour of spouse may be uneasy for the other, but it may not amount to cruelty in law for passing a decree of divorce. Therefore, in all cases the Court has to weigh the evidence led by the parties and a positive finding with all satisfaction has to be recorded that the plaintiff was treated with cruelty by the defendant making him/her entitled to get a decree of divorce.”

18. He further cited on a decision of Hon'ble Supreme Court in **Ramchander v Ananta [(2015) 11 SCC 539]**, para 10 of which is as under:-

“10. The expression 'cruelty' has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative

effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case [(2007) 4 SCC 511], this Court set out illustrative cases where inference of 'mental cruelty' can be drawn and they are only illustrative and not exhaustive.”

19. This is the appellant's case that after marriage the respondent lived with him for about 10 years. In their wedlock three children have been born. Moreover, AW2 Jagdish Yadav who resides in first floor of the appellant's house says in para 10 during her cross examination that this is true that appellant and respondent had good relation up till 10 years after the marriage, he does not know that the appellant has kept Anita as a wife. In other words he does not say clearly and strongly that the appellant has not kept Anita.

20. AW 2 Jagdish Yadav does not say as per the appellant's case that, after the marriage the respondent allegedly was harassing him and his family members, she allegedly used to live maximum period in her maternal house without his permission, she allegedly was not doing domestic works.

21. The appellant has neither examined his any other neighbour nor any other person of his vicinity who would state alleged said facts. Moreover, he has failed to prove any letter wherein said facts have been mentioned. Moreover, he has failed to prove any document of their community wherein said facts have been mentioned. Moreover he has failed to prove any report lodged in any police station wherein said facts have been mentioned. Moreover he has failed to prove any notice given by him to her wherein said facts have been mentioned. For not doing so, no explanation is offered by him.

22. As per the certified copy of the order dated 16-1-2012 passed by the

Chief Judicial Magistrate, Surajpur Ex. D-1 in an application filed under Section 125 of the Cr.P.C. by respondent and their daughters, the appellant has kept another woman.

23. The judicial precedent laid down in **Seth Ramdayal Jat** (Supra), this Court finds that Ex. D-1 is admissible in evidence for a limited purpose. Solely on the basis of Ex. D-1, it could not be determined that the appellant allegedly has kept Anita as his wife. But it could be taken for the consideration along with other substantive evidence.

24. Looking to the above mentioned facts and circumstances, this Court finds that above mentioned judicial precedents laid down in **Adhyatma Bhattar Alwar** (supra), **Basudev Jatav** (supra) and **AS V. SNS** (supra) are not applicable in favour of the appellant's case and above mentioned judicial precedents laid down in **Mahesh Kumar Sinha** (supra) and **Ramchander** (supra) are applicable in favour of the respondent's case, regarding these points for determination.

25. After the appreciation of the evidence discussed herebefore this Court disbelieves on the aforesaid statements of para 3 of AW 1 Balgovind, and believes on aforesaid statements of para 2 of NAW 1 Fulkunwar, paras 2 and 3 of NAW 2 Sanpoornanand Tiwari.

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

27. After the appreciation of the evidence discussed herebefore, this Court finds that the respondent has not committed any cruelty rather the appellant

has committed cruelty with the respondent, he has kept another woman Anita as his wife. These are the just and sufficient grounds for the respondent to live separately from the appellant.

28. After the appreciation of the evidence discussed herebefore, this Court finds that after solemnization of the marriage, the respondent had not treated the appellant with cruelty. She has not deserted him 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. Thus, this Court decides points for determination No. 1 and 2 accordingly.

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

29. This has been earlier decided that appellant failed to prove grounds of cruelty and desertion, thus, this Court finds that appellant is not entitled to get the decree of divorce on the aforesaid grounds. Thus, this Court decides point for determination No. 3 accordingly.

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

30. 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 to the above extent. The appeal is dismissed.

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

32. A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge
3-5-2018