

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 163 of 2016

Shashi Bhushan Chandra, S/o Shyam Lal, Aged About 31 Years,
R/o New Mines Quarter, Chhota Bazar, Chirmiri, Police Station
And Post Chirmiri, District Korea, Chhattisgarh Through His
Natural Father Shyam Lal, S/o Mohit Ram, Aged About 53 Years,
R/o New Mines Quarter, Chhota Bazar, Chirmiri, Police Station
and Post Chirmiri, District Korea, Chhattisgarh.....Plaintiff,
Chhattisgarh

---- Appellant

Versus

Smt. Bisheshwari Chandra W/o. Shashi Bhushan Chandra, D/o.
Sewa Das Chandra, Aged about 25 years, R/o. Village
Beladula, Police Station & Post Jaijaipur, Tahsil Jaijaipur, District
Janjgir Champa (C.G.)

---- Respondents

For the Appellant	:-	Mr. Kunal Das, Advocate
For the Respondent	:-	None

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

11.10.2018

1. Heard on I.A. No. 01 of 2017, application for condonation of delay.
2. After hearing learned counsel for the appellant, delay of 58 days in filing of the appeal is hereby condoned and I.A. No. 01 of 2017 is allowed.

3. Heard learned counsel for the appellant on admission.
4. The family Court has dismissed the appellant's application under Section 13 of the Hindu Marriage Act 1955, for grant of divorce on the ground of desertion and cruelty.
5. The plaint allegation, as reflected in the impugned judgment is to the effect that after the marriage between the parties in 2009, the respondent stayed with the appellant for about 1 year, during which the respondent gave birth of a baby girl. After 3-4 months of the birth of baby girl, the respondent went back to her parental house but did not return. In 2011, she came to her marital house during marriage of the appellant's sister and again went back to her parental house after 3-4 days. Thereafter the appellant being mentally retarded was missing for about 4 years one month and 19 days. After his return to his own house, he again went to bring back the respondent but she refused to join matrimonial chord.
6. The appellant has not examined himself and in his place, his next friend/ guardian father Shyam Lal has been examined. Such statement cannot be treated to be the statement of the appellant.
7. It is settled proposition of law that evidence of power of attorney holder is not permissible in place of the plaintiff or the defendant, who is required to depose in person in support of the pleading. The attorney holder can be witness of the party to the suit, but cannot depose on behalf of a party to the suit.(See

Janki Vashdeo Bhojwani and Another v. Indusind Bank Ltd. and Others (2005) 2 SCC 217).

8. Thus in the absence of the appellant having entered the witness box, plaint averments have not been substantiated. In a suit for divorce allegation made by the applicant against the spouse is of personal nature, therefore, the same has to be proved by examining himself rather than leaving it to be evidenced by some other family members.
9. The trial Court has rightly found that the plea of desertion and cruelty has not been proved by the appellant. There is no substance in this appeal which fails and is hereby dismissed at the admission stage.

Sd/-

**Judge
Prashant Kumar Mishra**

Sd/-

**Judge
Vimla Singh Kapoor**