

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 118 of 2004****Reserved on : 17.01.2019****Delivered on : 31.01.2019**

Laxman Singh Dhurve, aged about 30 (29) years, S/o Shri Bhagela Singh, Occupation- Teacher, R/o Village- Titri, Police Station- Rengakhar, Tahsil & District- Kawardha, Presently District- Kabeerdham (C.G.)

---- Appellant**Versus**

Smt. Sunita Bai, aged about 26 (25) years, W/o Shri Laxman Singh Dhurve, D/o Laamu Singh Markam, R/o Baihatola Kursipar, P.O. Birsa, P.S. Malajkhand, Tahsil- Behar, District- Balaghat (M.P.) (Wrongly mentioned as C.G.)

---- Respondent

For Appellant	:	Mr. P.K.C. Tiwari, Senior Advocate with Mr. Ashutosh Trivedi, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 28(I) of the Hindu Marriage Act, 1955 against judgment/decreed dated 09.02.2004 passed by Additional District Judge (FTC), Kawardha (C.G.) in Civil Suit No. 1-A/2003, wherein the said court dismissed the petition filed by the appellant (Husband) under Section 9/13 of the Hindu Marriage Act, 1955 for decree of restitution and in alternate decree of divorce against the respondent (Wife).
2. As per version of the appellant, he and the respondent were married on 15.05.2000 as per customary rites at parental house of the

respondent. The appellant and his father were prosecuted on FIR lodged by the respondent on 16.07.2000 at police station- Malajkhanda for the offence punishable under Section 498A, 494/34 of IPC, 1860 in which, they have been acquitted vide judgment dated 07.08.2001. The respondent has deserted the appellant since 16.07.2000 and in spite of repeated efforts made by the appellant, she did not return to her matrimonial home that is why the appellant filed petition before the trial court, but the trial court has not evaluated the evidence in its true perspective and came to wrong conclusion on most hyper technical grounds, which are not available under the law, therefore, the finding arrived at by the trial court is liable to be reversed and a decree be passed against the respondent.

3. From evidence of Laxman Singh (AW-1) and Fagu Singh (AW-2), it is established that marriage between the parties solemnized on 15.05.2000 and after one year of marriage, she (respondent) deserted the appellant. The appellant made frequent efforts to bring the respondent from her parental home, but the same proved to be futile exercise that is why the appellant filed the petition before the trial court on 30.01.2003.
4. Learned counsel for the appellant submits that 16 years have been passed, but the respondent voluntarily deserted husband against his wishes and without his consent and never returned matrimonial home for lost 16 years even after repeated efforts made by the appellant, which shows that the respondent has permanently forsaken the husband and has deserted husband without reasonable cause.

Therefore, looking to the intentional permanently abandonment, a decree of divorce should be passed.

5. This appeal is continuation of the petition filed by the appellant. This Court has issued notice to the respondent, but she refused to take the notice, therefore, there is nothing on record to rebut the evidence adduced by the appellant. From the evidence, it is clear that the respondent is living separately in her parental home and she had no intention to resume matrimonial relation. For desertion, two essential conditions be there:-

- (i) Factum of separation &
- (ii) Intention to bring cohabitation permanently to an end (animus deserendi)

6. Similarly, two elements are essential for deserting the spouse:-

- (i) absence of consent and
- (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home

7. There is nothing on record to show that there was any repulsive conduct of the appellant for frustration of consummation of marriage. It is also not on record that atmosphere prevalent in husband house made it any harass her to stay there. From the evidence, it is established that the appellant is always willing for company of the respondent, but she refused to stay with the appellant. Again, she did not participate in proceeding before the trial court and before this Court which shows her intention to bring cohabitation permanently to

an end.

8. Looking to the entire evidence, it appears that the respondent is reluctant to return to her matrimonial home and she is willing to get rid of the appellant. She did not leave the house with the consent of the appellant and there is nothing to show that conduct of the appellant reasonably caused the respondent to leave the matrimonial home. Looking to her desertion of 16 years and further looking to the fact that she is not willing to participate in any legal proceeding, the only course open for the parties to close the chapter when they cannot live together.
9. Looking to the factual and legal aspect of the matter, finding arrived at by the trial court is not sustainable and the same is hereby set aside. It is a case where decree of divorce should be passed in favour of the appellant and against the respondent. The respondent did not appear before the trial court, therefore, there is nothing on record that wife has no independent income, therefore, alimony or maintenance is not granted at this juncture, but she is at liberty for claiming alimony or maintenance as per provisions of Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956 or some other general laws. In view of this Court, finding of the trial court is not sustainable and the same is hereby reversed.
10. Accordingly, the decree is passed in favour of the appellant and against the respondent on the following terms and conditions:-
 - (i) The appeal is allowed. The marriage between the appellant and the respondent solemnized on 15.05.2000 is dissolved from the

date of decree.

- (iii) Parties to bear their own costs.
- (iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge