

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 15-01-2019

Judgment delivered on 28-03-2019

FA No. 95 of 2003

Fagooram s/o. Kisun Ram Sahu aged about 42 years, Caste Sahu r/o. Village Jagannathpur, Sankra, Tahsil Balod District Durg (CG).

---- Appellant/defendant

Versus

Smt. Tulsi Bai, w/o. Fagoo Ram aged about 40 years, r/o. Village Jagannathpur, Sankar, Tahsil Balod, District Durg (CG).

---- Respondent/plaintiff .

For appellant	:	Mr. V.G. Tamaskar, Advocate.
For respondent	:	Mr. Yashwant Singh Thakur, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 16-4-2003 passed by the Additional District Judge, Balod (Durg) (CG) in Civil Suit No.9-A/2002 wherein the said court granted decree of restitution of conjugal rights in favour of respondent/wife and against the appellant/husband.

2) Parties to this appeal are Hindus and their marriage was solemnized in the year 1977. Three children were born out of their wedlock. Parties were separated about seven years back some time in the year 1995. As per version of appellant/defendant-husband, respondent/plaintiff-wife developed illicit relation with one Murari and also lodged a complaint under Section 498-A of IPC at Police Station Balod. After hearing both sides, the trial Court decreed the suit for restitution of conjugal rights against which this appeal is preferred.

3) Learned counsel for the appellant would submit as under:

i) Relation between the parties has become strained and it is reached to point of no return, therefore, passing of decree is redundant.

ii) The trial Court ought not to have directed restitution within two months because there is no such provision in Hindu Marriage Act, 1955, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on factual

matrix and legal aspect of the matter and the same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment and decree has been passed.

6. Respondent/plaintiff adduced evidence of herself as PW/1 and Krishna Kumar (P/2) and Jagatram (PW/3) whereas appellant/defendant adduced evidence of himself as DW/1 and Sisupal (DW/2). From the evidence of respondent/plaintiff side, it is established that the appellant ousted her from his house that is why she is living in her parental home at village Tarod with her children. From the evidence of the appellant side, it is clear that respondent is not residing with appellant and from the evidence of the appellant it is not established that he tried for company of his wife as no application for restitution of conjugal right was filed by him in the court of law. It is the respondent/wife who filed an application for restitution which shows that it is the appellant who deserted his wife and did not try to maintain their marital relation. It is pleaded by the appellant before the trial court that the respondent was having illicit relation with one Murari, but said Murari was not produced before the trial Court by the appellant who was material witness to substantiate the pleading. In absence of production of material witness, it can be inferred that

if Murari would have been produced before the trial court, he would not have supported the version of the appellant.

7. The trial Court has elaborately discussed the entire evidence and recorded finding that restitution of conjugal right has to be maintained by both sides. Finding of the trial Court is based on legally admissible evidence adduced before the said court which is neither based on irrelevant material nor any extraneous material. After re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

8,. Accordingly, decree is passed in favour of respondent and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju