

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 31-1-2019

Judgment delivered on 20-02-2019

FA No. 148 of 2006

- Hridayaram Hirwani, aged about 30 years, s/o. Shri Tukaram Hirwani, r/o. Kanharpuri, Ward No. 28, Tahsil and District Rajnandgaon (CG).

---Appellant

Versus

- Smt. Laxmi Hirwani, aged about 25 years, wife of Shri Hridayaram Hirwani, r/o. Kanharpuri, Ward No. 28, Rajnandgaon (CG) presently residing at M.P. 392, Rajput Niwas, Jagriti Chowk, Shankarnagar, Durg (CG).

○

--Respondent

For appellant : Mr. P.K.C. Tiwari, Sr. Advocate with
Shri Ashutosh Trivedi, Advocate.

For respondent : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the order /decree dated 27-6-2006 passed by the First Additional District Judge, Rajnandgaon in M.J.C. No.8 of 2002 filed under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short, "the Act, 1956") by the respondent/wife, wherein the said court

granted a sum of Rs.2000/- per month as maintenance to the respondent/wife and against the appellant/husband.

2. Marriage between appellant/husband and respondent/wife is admitted.

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

- I) The trial Court committed error in holding that the appellant committed cruelty against the respondent that is why she is entitled to live separately and receive maintenance.
- ii) The trial Court has not considered the provisions of Section 18(2) (b) of the Act and according to that reasonable apprehension in the mind of wife that it will be harmful or injurious to live with her husband has to be established, but that is not established, therefore, order of the trial Court is not sustainable.
- ii) The trial Court has not considered the appellant is unemployed and owns no property.
- iv) The trial Court committed error in admitting the document of the respondent (Ex.A/1) without legal and formal proof.

- v) The trial Court has not considered the impact and affect of Ex.D/7 which is order passed by the Judicial Magistrate First Class, Durg on 23-8-2004 in Miscellaneous Criminal Case No. 11 of 2001, ordering the appellant to pay an amount of Rs.300/- as maintenance allowance to the respondent under Section 125 of the Cr.P.C., which was enhanced to Rs.1000/- per month.

- 4. I have heard learned counsel for the appellant and perused the record in which order and decree has been passed.
- 5. From the record, it appears that respondent is living separately from the appellant. It also reveals from the record that the appellant charged the respondent that she is suffering from Leprosy but that charge was not established before the trial Court which amounts to cruelty on the part of the appellant. It also reveals that a decree of divorce has been passed between the parties by the Family Court, Rajnandgaon in Civil Suit No. 45-A/2007 vide judgment dated 24-10-2009. A divorced wife is entitled for maintenance or alimony after divorce till she re-marries. In the present case, no alimony is given to the respondent/wife. Looking to the facts and circumstances of the case, respondent/wife is entitled to live separately and get maintenance from the appellant.

6. It is contended on behalf of the appellant that earlier order of maintenance was passed by the Competent Court under Section 125 of the Cr.P.C., which was enhanced by the Revisional Court to Rs.1000/- per month, therefore, that amount ought to have been considered by the trial Court.
7. In view of this Court, at this juncture purchasing power of money is reducing day by day. From the evidence, it is clear that the appellant is capable to earn. Anyone who can earn, is presumed to earn minimum wages prevailing. At this juncture, minimum wages is Rs.300/- per day which comes to Rs.9000/- per month, therefore, earlier order of Rs.1000/- and the order passed by the trial Court regarding maintenance of Rs.2,000/- per month in all Rs.3000/- per month cannot be termed as disproportionate to the income of the appellant. Argument advanced on behalf of the appellant is not sustainable.
8. After re-assessing the oral and documentary evidence, this court has no reason to substitute contrary finding because finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material.
9. Accordingly, decree is passed against the appellant and in favour of respondent as under:
 - (i) The appeal is dismissed with cost.

- (ii) Appellant to bear the cost of respondent through out.
- (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