

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.291 of 2000**

Smt. Rukmani Tarar Wife of Teteshwara Nath Tarar, aged about 41 years, Business-Nil, R/o. Koshtapara, Narayanpur, Tahsil Narayanpur, Distt. Bastar (MP) (Now CG)

---- Appellant**Versus**

Teshwara Nath S/o. Late Shri Dinanath Tarar, aged about 45 years, Service, R/o. Gram Pendrawani, Post Kanwar, Tahsil Gurur, Distt. Durg (MP)(Now CG)

---- Respondent

 For the appellant : Smt. Kiran Jain, Advocate
 For the respondent : Shri AD Kuldeep, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****26.8.2019**

1. This appeal filed under Section 28 of the Hindu Marriage Act, 1955 is against judgment/decreed dated 15.02.2000 passed by Additional District Judge, Balod, Distt. Durg in Civil Suit No.19A/98 wherein the said Court granted decree of divorce against the appellant/wife and in favour of the respondent/husband.

2. Marriage between the parties was solemnized on 03.02.1977. Admittedly, both are living separately since 1993. As per the appellant, the trial Court erred in believing the evidence of the witnesses of the respondent and overlooked the documentary evidence adduced on behalf of the appellant. The trial Court erred in appreciating the relationship between the parties and recorded finding against the interest of the appellant which is mis-

appreciation of the evidence of facts and legal aspects of the matter, therefore, the same is liable to be set aside.

3. On the other hand, learned counsel for the respondent submits that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with.

4. Now the question for consideration before this Court is whether the decree passed by the trial Court is liable to be reversed. Both sides adduced oral and documentary evidence and from their evidence it is clear that the parties are living separately since 1993. From the evidence it is established that the relation between the parties is not normal because of the allegation and counter allegation against each other. Now it is about 26 years that the parties are living separately.

5. Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. The petition was filed before the trial Court on the ground of cruelty and withdrawal from the company for more than two years. The appellant submitted a letter to the President of his community (Ex-D/5) in which she mentioned the respondent as her ex-husband. This letter is written on 27.6.1995 which shows that she has withdrawn from the company of the respondent in the year 1993 that is why she mentioned the respondent as her ex-husband.

6. Today, the position is that the marriage between the parties is totally unworkable, emotionally dead, beyond salvage and therefore, the trial Court opined that the decree of divorce should be granted to put quietus to all the litigations between the parties and to save them from further agony. After reassessing the entire evidence and looking to the period of separation of 26 years, this Court has no reason to record a contrary finding. The ground raised in the appeal is now not sustainable.

7. Accordingly, the decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-

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

Sd/-

(Ram Prasanna Sharma)
JUDGE