

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.135 of 2012

Sushil Kumar @ Durgesh Patel, S/o Hemkumar Patel, Aged About 33 Years, R/o Village Khokhara, Tahsil Pusaur, District Raigarh P.S. Pussore Chhattisgarh

---- **Appellant**

Versus

Smt. Ishwari Patel, W/o Sushil Kumar @ Durgesh Patel, Aged About 30 Years, Present R/o Village Balamgoda, Tahsil And District Raigarh P.S. Korba C.G.

--- **Respondent**

For Appellant	:	Mr. Vipin Punjabi, Advocate
For Respondent	:	Mr. R.S. Patel, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board by Manindra Mohan Shrivastava, J.

19/07/2019

Heard.

1. This appeal is directed against impugned judgment and decree dated 13.07.2012 passed in Civil Suit No.12-A/2012, by which, the appellant's-husband application for grant of decree of divorce against the wife on the grounds of cruelty as well as desertion has been dismissed.
2. The appellant filed an application before the Family Court seeking decree of divorce on the grounds enumerated in Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act on the pleadings *inter alia* that the appellant was married to respondent on 20.05.2005 but sixth months thereafter, respondent insisting him to take a separate house and purchase land at Raigarh and start his own business leaving behind parents. When appellant did not accept this proposal, the respondent started abusing and insulting appellant's parents. It was not possible for the appellant to leave his parental village as he is the only issue of his parents and he has ancestral property and occupation of agriculture. Further allegation was the respondent

used to give threat of committing suicide, was not interested to doing household work and time and again, was insisting that she should be left to her parental house. 14 months after the marriage when child was born, the appellant thought that the respondent would mend her ways but there was no improvement and the respondent was quite often bent upon assaulting her parents. The respondent kept on insisting that she should be allowed to go back to her parental house and finally, when the appellant was working in agricultural field, respondent went back to her parental house along with her brother on 15.04.2008 and since then, she is residing there and thus deserted.

3. The respondent-wife filed her reply and while denying all the allegations stated that though at the time of marriage, her parents had already given Rs.1,50,000/-, after the daughter Gitika was born, again demand of Rs.3,00,000/- was made in the year 2011. When she requested her husband to get her daughter Gitika admitted in school, the appellant insisted that unless Rs.3,00,000/- are paid, he would not keep his wife nor will get the daughter admitted and thereafter, she was unceremoniously shunted out from her matrimonial house and sent to her parental house. Thereafter, despite repeated request and attempt made, the appellant and his parents refused to allow the respondent to come back to matrimonial house.

4. After having framed issues as to whether the cruelty was committed by the respondent and whether she was deserted the appellant, the parties were allowed to lead their evidence. Learned Family Court after examination of evidence on record came to the conclusion that none of the grounds were made out and therefore, suit was dismissed.

5. Learned counsel for the appellant submits that he has moved an application under Order 41 Rule 27 CPC to bring on record additional evidence relating to admission of the child in the school and that the respondent had also taken up a job of teaching in the school. He would submit that, though, he was diligently prosecuting his suit, the documents which were otherwise handed over to the counsel, inadvertently could not be filed before the Court. He would argue that these two documents are relevant as it relates to admission of the child in the school in the year 2006 at the place of residence of wife and further that the document relating to wife's engagement as teacher is relevant as it supports appellant's case that the wife had left matrimonial house since 2008 and she was residing with her parents and not

that she was thrown out of matrimonial house in the year 2011.

6. Learned counsel for the respondent would argue that the application is liable to be rejected because the cause shown is not at all bonafide. These documents are of dates prior to filing of the case. In order to somehow make out a ground, blame has been laid on the counsel.

He has also relied upon the judgment of the Division Bench of this Court in the case of **Daya Ram Soni V. Smt. Gyarsi Bai Khandelwal and others, AIR 2016 Chhattisgarh 73.**

7. The documents which are sought to be now led in evidence by the appellant are of period prior to date of filing of the suit. In the application, it is not claimed that the appellant came to know of this fact for the first time at the stage of pendency of the appeal. According to the appellant, himself, this fact was fully known to him as he had given this document to his counsel. If that be so, certainly in the application seeking divorce and in his own evidence, this fact would have been stated. When it was given to the counsel has also not been mentioned. Even if it is accepted for the sake of argument that at the time of filing of application, these two documents could not be placed before the Court due to inadvertence of the counsel, this does not appear to be probable because at later stage of the suit when the appellant, himself, appeared in the witness box, this fact could have been stated before this Court or an attempt would have been made to bring this document on record.

8. All this only show that the appellant has been negligent and without any just and reasonable cause, now he seeks to improve upon his case to overcome the finding recorded by learned Family Court. We consider it appropriate to refer to the observations made by the Division Bench of this Court in the case of **Daya Ram Soni (supra)**, relying upon the Supreme Court decision in the case of **N. Kamalam (dead) v. Ayyasamy**, 2001(7) SCC 503 and provision contained in Order 41 Rule 27 CPC, it was observed:

“13. A perusal of document which the Plaintiff intends to brought on record reveal that the same was obtained after the judgment of trial court which indicates that the said document was obtained by the Plaintiff so as to cover up the weakness, lacuna and shortcomings which have been detected by the trial court while adjudicating the suit for specific performance. The same is not permissible under the provisions of law for the reason that the suit for specific

performance is a discretionary relief in the factual matrix of the case. The Plaintiff at the appellate stage cannot take advantage by improving his case each time with fresh and new document. Such is not an intention and mandate under Order 41 Rule 27 CPC. Thus, the Plaintiff has failed to convince this court as to how he was prevented from producing this document before the trial court and also how this application meets the requirement of law as required under Order 41 Rule 27 CPC. In the absence of any substantive, cogent and plausible reasons and justification, the application cannot be accepted and as such the Plaintiff cannot be permitted to rely on the same.

14. The Supreme Court in 2001(7) SCC 503 : (AIR 2001 SC 2802) (N. Kamalam (dead) V. Ayyasamy) in a very categorical terms has held that the provisions under Order 41 Rule 27 have not been engrafted in [the Code](#) so as to patch up the weak points in the case and to fill up the omissions in the Court of Appeal. It does not authorize any lacuna or gaps in evidence to be filled up. It was also held that said provision of law does not entitle the Appellate Court to lead any fresh evidence only for the purpose of pronouncement of judgment in a particular way.

15. In view of the aforesaid judicial pronouncement and the fact that the Plaintiff has not been able to give sufficient cogent grounds for entertaining the application under Order 41 Rule 27 CPC, the same being devoid of substance deserves to be and is accordingly rejected.”

The application therefore deserves rejection and accordingly rejected.

9. On merits, learned counsel for the appellant argued that the appellant was entitled to decree of divorce on the ground of cruelty as well as on the ground of desertion because the appellant has not only made specific pleadings but also led clinching evidence to prove it. He would submit that the specific allegations that six months after the marriage, the respondent had insisted the appellant to get him separated from his parents, purchase land and construct house at Raigarh and abusing his parents, time and again, has been clearly deposed not only by the appellant in his evidence but other witnesses. He would further submit that despite repeated advise given to respondent and her parents to mend her ways, the respondent was not inclined to reside with the appellant and without informing the appellant on 15.04.2008, she left the matrimonial house along with her brother and children and since then, she has not returned despite all attempts made by the appellant including intervention of their community. Learned counsel for the appellant also argued that learned Family Court failed to appreciate that the respondent admitted that community meeting was held in which, she had not

participated; that she left the house of the husband and residing separately. It is also argued that learned Court below failed to properly appreciate the evidence of Lekhram/Non-Witness No.3, who has clearly admitted regarding existence and attempt of settlement of dispute and advice to respondent wife and also that it is the respondent wife, who deserted the husband and living in parental house for more than 4 years. The allegation of cruelty and harassment meted out to the appellant are not the version of the appellant alone but the other witnesses have also stated regarding cruel act of the respondent in harassing the appellant's parents by raising unreasonable demand of living separately and hurling abuses.

10. On the other hand, learned counsel for the respondent would argue that the appellant is not entitled to decree of divorce on the basis of vague and unspecific allegation. It is submitted that the allegation both in the pleadings and as stated in the evidence are vague with regard to time, date and place of alleged cruelty. The allegations are omnibus in nature without any specific incident. The respondent was always willing to reside with the husband but that the appellant and his family are greedy person and they were demanding huge amount as precondition for allowing her to come back to the matrimonial house. The allegation of respondent entering into quarrel or dispute with the appellant and appellant or his parents is improbable because after the marriage, the parties were blessed with the child which proves that atleast till that time, their marital relations were normal, peaceful and cordial. It is further argued that the appellant has failed to prove that the respondent had deserted the appellant. It was because of harassment meted out that the respondent had gone to her parental house for sometime and thereafter, the appellant did not come to take her back and when respondent along with her parents went back to matrimonial house, she was not accepted and a condition was imposed that she and her parents should first give an amount of Rs.3,00,000/-. It is submitted that all the allegation of abuses or slapping are exaggerated. Therefore, the order passed by the Courts below does not warrant any interference.

11. The pleadings in the application are regarding insisting upon husband appellant from shifting to Raigarh city, purchasing a land and constructing a house and doing a job. In the pleading, however, no specific dates mentioned as to when and in what manner the respondent had abused the parents of the

appellant. The allegations of respondent threatening to commit suicide are also vague and unspecific. In the application, the appellant has stated that the parties were blessed with a daughter after 14 months of their marriage which shows that the relationship between the parties were cordial. Therefore, the allegation that immediately after six months of the marriage, dispute arose and the respondent started misbehaving appears to be improbable. The pleadings contained in para 6 and 7 do not contain any specific plea of cruelty. In para 6, all that has been said is that the respondent attempted to assault the parents of the appellant. But no specific dates have been mentioned. In para 7 of the pleadings, it has been stated that on 15.04.2008, the respondent wife went to her parental house without informing the appellant, along with her brother. In the evidence also, the appellant has not come out with any specific date and incident but general allegations have been leveled against the respondent that she was insisting on shifting to the city of Raigarh and start some business. The statement of AW-1/Sushil Kumar that he was abused by his wife is without any specific pleadings in the application and appears to be exaggeration. In his cross-examination, he has admitted that he does not remember the date, on which, he was abused by his wife. He admits that he did not inform to anybody else immediately. It has also come in the evidence that the appellant is the only issue of his father and his father is possessed of huge chunk of agriculture land. In the cross-examination, though he states that he had gone to the house of his wife to take her back but he cannot disclose the date. There is no specific pleading in this application. He admits that he has not given any notice on her allegation and admits that in the community meeting held on two occasions, he did not participate in that meeting. The other three witnesses namely Hemkumar Patel (AW-2), father of the appellant, Medani Kumar Patel (AW3), cousin of the appellant and Rohit Kumar Patel (AW-4), member of his family, all are related witnesses. No previous incident of cruelty, who has been reported though there are solitary incident of hurling abuses in day to day life. From entire evidence led by the appellant, no serious allegation is made out to constitute cruelty. No doubt, there was some dispute between husband and wife and attempts were made to pacify, every dispute between husband and wife, cannot be said to be cruelty by one against the other. A decree for divorce on the ground of cruelty cannot be granted on petty and trivial incident of dispute or misbehavior with each other. May be that the respondent wife was willing to reside in the urban area which is adjacent to the village of the parties. However, towards that, there is nothing to show that

the respondent had committed such an act which would constitute cruelty. Petty incidents have been made basis to seek decree of divorce. The evidence of the respondent also shows that some meeting were held because of certain dispute. However, there is no evidence of any admission on the part of the respondent that her act amounted to cruelty against the appellant.

12. Moreover, case of desertion is also not made out. The appellant though states that his wife had gone to her parental house on 15.04.2008, there is no evidence led by him to prove that he made any attempt to bring his wife back to the matrimonial house. On the other hand, as also respondent Ishwari Patel/NA witness in her evidence has stated that she was being subjected to cruelty and abuses and time and again, she was being asked to bring money. She further states that in July, 2011, she was unceremoniously shunted out of the matrimonial house and when her uncle Loknath attempted to settle her back to matrimonial place, doors were shut and she was not accepted. In para 5 of her evidence, she has clearly stated that even now she is prepared to reside with her husband.

13. Though both the parties and the witnesses have stated with regard to convening of meeting and advice given to the parties. Lekhram (NAW-3) who is not related to any of the party has stated regarding appellant denying take his wife. The respondent's father has deposed that in July, 2011, the appellant came to meet Khageshwar Patel raising a demand of Rs.3,00,000/- otherwise he would not keep his daughter.

14. Upon consideration of overall material on record, nature of allegations and the evidence, no case of cruelty or desertion is made out so as to entitle the appellant to decree of divorce.

15. In the result, no case is made out and the appeal is therefore dismissed.

16. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge