

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 136 of 2019**

Smt. Priyanka Shukla, aged about 33 years, W/o Navneet Shukla, R/o Quarter No. 1C-16, SBS Colony, SECL Korba Chowki, Manikpuri, Tahsil & District Korba (CG)

---- Appellant**Versus**

Navneet Shukla, aged about 37 years, S/o late Hanuman Shukla, R/o Village Kormi, PS – Hardikala Tona, District Bilaspur, CG

---- Respondent

For Appellant : Dr. Kumaresh Tiwari, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava &**Hon'ble (Smt.) Justice Vimla Singh Kapoor****Order on Board by Vimla Singh Kapoor, J****15/07/2019:**

1. Heard on IA No. 01/2019 – an application for condonation of delay in filing the appeal.
2. For the reasons stated in the application it is allowed and the delay of 34 days in filing the appeal is hereby condoned.
3. With the consent of the appellant's counsel the matter is disposed of at the admission stage itself.
4. What is under challenge in this appeal is the judgment dated 29.01.2019 passed by the Family Court, Korba in Civil Suit No. 157-A/2017 rejecting the application filed by the appellant/wife under Section 13 (i) (i-A) (i-B) and (iii) of the Hindu Marriage Act on the ground of matter being beyond jurisdiction.
5. Succinctly stated factual matrix leading to the disposal of this appeal unfurls that marriage of the appellant with the respondent herein was

solemnized on 11.07.2007 at Bilaspur, according to the Hindu rites and rituals and that with the passage of time matrimonial discord started eclipsing their post marriage life. It is *inter alia* alleged that having been subjected to physical and mental torture coupled with ouster from the matrimonial house at the hands of respondent/husband and his mother for demand of dowry, the appellant/wife even suffered a miscarriage and thereafter when the situation worsened, on 13.12.2017 she moved an application under Section 13 (i) (i-A) (i-B) and (iii) of the Hindu Marriage Act for dissolution of marriage in Family Court, Korba. In the said application, she had clearly stated that since 2015 she was residing at SECL Korba with her mother. Learned Family Court, however, rejected the said application moved by the appellant/wife on the ground that as her marriage was solemnized at Bilaspur; after marriage she resided with her husband at Bilaspur and even the address of her husband has been shown to be of Bilaspur, her application filed in Family Court Korba, suffered from jurisdictional error in view of the provisions of Section 19 of Hindu Marriage Act.

6. Having heard counsel for the petitioner and gone through the documents on record, this Court is not inclined to concur with the conclusion drawn by the Family Court that as neither the marriage of appellant with the respondent was solemnized at Korba nor did she last reside with him at Korba, her application under Section 13 (i) (i-A) (i-B) and (iii) of the Hindu Marriage Act presented in Family Court Korba, could not be entertained by the said Court on account of being beyond jurisdiction in the light of provision of Section 19 of the Hindu Marriage Act. On the contrary, Section 19 (1) (iii-a) of the Hindu Marriage Act entitles the appellant/wife to present the application under Section 13 (i) (i-A) (i-B) and (iii) of the Hindu Marriage Act to the Family Court, Korba where she resided at the time of its presentation with her mother. Relevant portion of Section 19 (1) (iii-a) of the Hindu Marriage Act reads as under:

“19. Court to which petition shall be presented – (1) Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction-

(i)

(ii)

(iii)

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition.”

7. It has come even in the judgment impugned that since the year 2015 the appellant/wife was living with her mother at Korba and therefore, she is entitled to file an application under Section 13 (i) (i-A) (i-B) and (iii) of the Hindu Marriage Act to the Family Court, Korba. In this view of the matter and also looking to the provisions of Section 19 (1) (iii-a) of the Hindu Marriage Act, this Court is of the opinion that learned Family Court was not justified in rejecting the application filed by the appellant/wife for dissolution of marriage holding it beyond jurisdiction and the judgment impugned is liable to be set aside.

8. Accordingly, the appeal is allowed, the judgment impugned is set aside and the matter is directed to be remanded back to the concerned Court for being decided on its own merits. Let this be done as expeditiously as possible preferably within a period of six months from the first listing of the case before the said Court. Parties to appear before the Family Court, Korba on 19.8.2019.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge