

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 28.01.2019****Judgment delivered on 14.02.2019****First Appeal No.169 of 2003**

Ramkumar Dewangan, aged about 28 years, S/o. Girdharlal Dewangan, R/o. Mahasamund, Tehsil and District Mahasamund (CG)

---- Appellant**Versus**

Smt. Chameli Bai, W/o. Ramkumar Dewangan, aged 23 years, R/o. Shishak Colony, Gariyabandh (CG)

---Respondent

For Appellant	: Shri Vishnu Koshta, Advocate
For respondent	: Shri Raghavendra Pradhan and Shri Shikhar Sharma, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment and decree dated 28.6.2003 passed by First Additional District Judge, Mahasamund (CG) in a Civil Suit No.10A/2001 wherein the said Court dismissed the application filed by the appellant against the respondent for divorce under Section 13 of the Hindu Marriage Act, 1955.

2. In the present case, the appellant is the husband of the respondent and marriage between the parties took place on 08.3.1995 at village Chikhali. Out of the wedlock one female child was born who is living with the respondent. It is alleged by the appellant that the respondent never had love attachment mentally and physically with the appellant and the family members and was

of the opinion that she was maintaining the relations only for verification through social eyes. The respondent used to threaten the appellant and his family members for inculcating them in criminal case and used to torture them physically and mentally. On 27.3.1996 the appellant out of fear and torture left the respondent in her maternal home. The respondent reported against the appellant and his family members for cruelty and they were charge sheeted and offence under Section 498-A IPC and it is a case of desertion by the respondent but the trial Court dismissed the application against the factum and legal aspects of the matter.

3. Learned counsel for the appellant submits as under:

(i) There is evidence of desertion by the respondent without any cogent reason and continuous separation of the parties is sufficient for a decree of divorce but the trial Court came to a wrong conclusion.

(ii) As the parties were living separately since 27.3.1996 and there is no conciliation between them therefore, decree ought to have passed in favour of the appellant.

4. The first question for consideration before this Court is whether the respondent is guilty of desertion of the appellant for more than two years since the date of filing of the petition, i.e. 08.5.2001.

5. So far as desertion of spouse is concerned, two essential conditions must be there:-

(i) Factum of separation and

- (ii) Intention to bring cohabitation permanently to an end
(*animus deserendi*).

6. Similarly, two elements are essential for deserting spouse:-

- (i) Absence of consent,
- (ii) Absence of conduct giving reasonable cause to the spouse leaving matrimonial home.

7. From the evidence of the appellant (AW-1) it is clear that earlier also the appellant has filed application for divorce in which negotiation was done before the Court in which the appellant gave consent to remain with the respondent and the respondent was also willing to go with him. He also admitted that his father was not willing to keep the respondent in his house. From the evidence of the appellant himself it is clear that the respondent was willing to go with him. Therefore, it is not a case where the respondent had intention to bring matrimonial relation to an end. It means that the respondent was ready to resume cohabitation and she prepared to live with the husband without pre-condition.

8. From the evidence of the respondent (DW-1), her father and some other persons went to the house of the appellant, but they closed the door before them that is why she returned with her father and other people of her locality. Looking to the entire evidence, it is established that the respondent has not abandoned permanently her relation with the appellant. Therefore, any temporary abandonment under some anger or disgust of love will not meet the requirement of the law. From the evidence of the respondent it is established that she made efforts to re-establish

the conjugal relation, but the same is not accepted by the appellant. Therefore, it cannot be said that the respondent is guilty for desertion.

9. From the evidence it is established that the appellant is responsible for not allowing his wife to matrimonial house and he cannot take benefit of his own wrong. Therefore, finding of the trial Court is not liable to be interfered with and the arguments advanced on behalf of the appellant is not sustainable.

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

- (1) The appeal is dismissed with cost.
- (2) The parties to bear their own cost.
- (3) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE