

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 187 of 2018

Manish Soni, S/o -Shri Dinesh Soni, Aged about -28 Years, R/o-
Patel Ward, Ward - 17 Dongargarh, Tahsil- Dongargarh, District-
Rajnandgaon (C.G.)

---- Appellant

Versus

Smt. Dimple Soni, W/o - Manish Soni, Through Govind Soni,
Above Parijat Sangit Kalan, Near Sai Tailoring Vocational School,
Hanuman Mandir Gali, Dhantoli, District -Wardha (Maharastra)

---- Respondent

For Appellant : Shri Gurudev Sharan, Advocate.

For Respondent : Shri Shivendu Pandya, Advocate.

Hon'ble Shri Justice Ram Prasanna SharmaOrder On Board01/08/2019

1. This appeal is preferred against the judgment/decreed dated 16th July, 2018 passed by Additional Judge, Dongargarh, District- Rajnandgaon (C.G.) to the Court of 1st Additional District Judge, Rajnandgaon (C.G.) in Hindu Marriage Case No. 17-A/2016 wherein the said Court dismissed the application filed by the appellant for restitution of conjugal right under Section 9 of the Hindu Marriage Act, 1955.
2. The appellant was married with the respondent on 30th June, 2014 according to Hindu rites and customs. The respondent joined the company of the appellant and came to matrimonial house to reside with the appellant and out of their wedlock, one son namely Jagdish was born on 18th July, 2015 at Wardha (Maharastra) who is residing with the respondent. During the period of her stay with the appellant, behavior of the respondent was initially good, but after some time, her behavior became irresponsible and was misbehaving with the elders of the family.

She insisted that she is a modern girl and will not do household works. The appellant took the respondent on a trip to Shimla, Manali and Mathura etc. and during that trip, she insisted being taken to Wardha. She gave birth to a child on 18th July, 2015 at Wardha and she made to compel the appellant to live in Wardha as she is not willing to live at Dongargarh (C.G.). As the respondent left the family of the appellant, an application for restitution was filed, but the trial Court dismissed the same contrary to the facts and legal aspects of the matter.

3. Learned counsel for the appellant submits as under:-

- (i) It is the respondent who has withdrawn from the company of the appellant without any reason, therefore, decree for restitution ought to have been passed.
- (ii) It is the respondent who insisted to live at Wardha after withdrawing the company of the appellant which shows that she has withdrawn without any legal excuse. Finding of the trial Court is not based on proper marshalling of evidence, therefore, the same is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits as under:-

- (i) There was violence against her at Dongargarh by the appellant and his relatives and again, the appellant side made allegation regarding chastity of the respondent that she is caring child of some other and same is not the child of the appellant which is cruelty on the part of appellant and there is every scope of violence against her, therefore, she has withdrawn which is permissible under the law.

- (ii) Again, she has filed a petition for divorce against the appellant on the ground of cruelty, therefore, finding of the trial Court is not liable to be interfered with.
5. The appellant side adduced evidence of Manish Soni (PW-1) and Dinesh Soni (PW-2) and the respondent side adduced evidence of Smt. Dimple Soni (DW-1) and Govind Soni (DW-2). From the evidence of appellant side, it is established that the respondent insisted to go Wardha after pregnancy and she did not return from that place. As per version of this witness, the appellant made statement that she will not cook food and insulted family members of the appellant. Contrary to the same, Dimple Soni deposed that the appellant side did not take care during her pregnancy that is why she left Dongargarh and came to her parental house at Wardha. As per version of this witness, the appellant side demanded Rs. 6 lakhs from him and harassed her and looking to their demand, it is not safe for her to stay with the appellant because her life is not secured in the house of appellant. Version of this witness is supported by version of Govind Soni, who is father of the respondent.
6. Admittedly, a petition under the Protection of Women of Domestic Violence Act, 2005 is filed by the respondent before the Court at Wardha against the appellant and his family members in which she has stated that relation between the parties is not normal. The respondent side has shown that due to illegal demand, it is not safe for her to stay with the appellant at Dongargarh. The trial Court has elaborately discussed the entire evidence and recorded finding that the respondent has not withdrawn from the family of appellant without reason. Admittedly, now respondent

has filed an application for divorce against the appellant which also shows that all kind of negotiation for re-union is failed. As litigation is on between the parties for a long, it would not be proper for this Court to interfere with the order of trial Court and grant a decree of restitution.

7. Accordingly, the instant appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Vasant