

HIGH COURT OF CHHATTISGARH, BILASPUR
FA(MAT) No. 49 of 2019

Pushpa Mahawar, aged about 34 years, W/o. Dipak Mahawar, R/o. Jagdalpur, District Bastar, CG. ---- **Appellant**

Versus

Dipak Mahawar, aged about 47 years, S/o. Late Hariram Mahawar, R/o. Sarojini Chowk, Kurud, District Dhamtari, CG. ---- **Respondent**

For Appellant : Shri Aman Kesharwani, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Vimla Singh Kapoor, J.

15/11/2019

Heard on I.A. No. 01/2019 – an application for condonation of delay in filing the appeal.

2. For the reasons mentioned in the application, it is allowed and the delay of 111 days in filing the appeal is condoned.
3. Heard counsel for the appellant on merits.
4. Undisputed facts of the case in nutshell are that the appellant and the respondent were married in the year 2000 as per the prevailing Hindu Rights and Customs. With the passage of time, the relations between the husband and wife turned sour and to settle the acerbity, a community meeting was held on 28.01.2004 where a mutual divorce agreement was executed in the presence of the members of the community. On the basis of said divorce agreement the husband moved an application under Section 13 of the Hindu Marriage Act for dissolution of marriage but as the wife failed to

appear in the divorce proceedings, learned Family Judge by the *ex-parte* order dated 06.02.2006 directed for dissolution of marriage between the parties. Subsequently, wife moved an application under Order 9 Rule 13 CPC in Family Court Dhamtari for setting aside the *ex-parte* judgment and decree of divorce dated 06.02.2006. It is relevant to note here that as she did not appear before the said Court, her application under Order 9 Rule 13 CPC came to be dismissed for want of prosecution by order dated 07.01.2015. Another brazen attempt on the part of the wife was that she again moved an application in Family Court Jagdalpur, for restitution of conjugal rights and for setting aside the *ex-pate* judgment and decree of divorce dated 06.02.2006. However, learned Family Court Jagdalpur by order dated 17.05.2019 rejected the said application by holding that since the marriage between the two had already ended by a decree of divorce dated 06.02.2006, the wife was precluded from seeking the restitution of conjugal rights as it could be done only when the marriage between them was in existence. It is this order which is under challenge in the appeal.

5. After hearing counsel for the appellant/wife and going through the documents on record, this Court has no hesitation in endorsing the view taken by the Family Court that an application for restitution of conjugal rights is not maintainable after the valid decree of divorce dissolving the marriage has been passed, and such a remedy could be availed only during existence of the marriage. Another reason assigned in the impugned order that as the application for setting aside *ex-parte* judgment and decree has already been rejected by a competent Court of law, may be for want of prosecution, the Court

passing the order impugned had no jurisdiction to decide her application filed for restitution of conjugal rights. If the wife was genuinely interested in prosecuting the matrimonial case, she should not have failed in marking her appearance before the Family Court Dhamtari either in the divorce proceedings initiated by the husband or subsequently in the proceedings initiated by herself for setting aside *ex-parte* judgment and decree of divorce, but she has failed to put her defence on both the occasions for the reason best known to her.

6. The order impugned contains the valid reasons for rejection of the claim of wife for restitution of conjugal rights and also for setting aside the *ex-parte* judgment and decree of divorce for want of jurisdiction. No illegality in the well written findings in the order impugned is noticeable to this Court warranting interference with the same.

7. Appeal thus being without any substance is liable to be and is hereby dismissed.

8. There would be no orders as to cost.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge