

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 258 of 2018

- Ratna Jani, W/o Shri Koushik Jani, Aged About 31 Years, R/o Village Kotagaon, Thana Mahamaya, District Balod, Chhattisgarh

---- Petitioner

Versus

- Koushik Jani, S/o Shri Yogendra Jani, Aged About 36 Years, Village and Post Perawal Near Somnath, Behind Jalaram Talkies, District Junagarh, Gujrat, PIN 362265

---- Respondent

For Appellant

Shri V. K. Sharma, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Mrs. Vimla Singh Kapoor

Order On Board

17/01/2019

1. Appellant would assail the legality and validity of the impugned judgment and decree, whereby the Trial Court has dismissed her suit for grant of divorce on the ground of cruelty and desertion.
2. The parties were married at Village Kotagaon, Police Station Mahamaya, District Balod on 12.12.2008. They were blessed with a son born on 09.11.2009.
3. According to the appellant, the respondent was not treating her well and was subjecting her to cruelty, therefore, it has become difficult to live with the respondent.
4. It was stated that the respondent used to commit physical cruelty on suspicion that the appellant has relation with someone else.

During her stay in the matrimonial house, she was not allowed to speak to members of her parental house. She is residing at her parental house from 2011 onwards, but during this period the respondent never tried to take her back to her native village or to Gujrat, where the respondent is employed.

5. In her statement before the Court, the appellant admitted that soon after delivery of her son Harsh on 09.11.2009, the respondent husband came to her village to take her back to Gujrat, but she refused to accompany him nor her parents allowed her to proceed along with husband. She made statement of her own during her cross examination that she herself was not willing to proceed with the respondent as she had fear of her life. However, there is no criminal complaint by the appellant wife against her husband or any other member of her marital house alleging commission of cruelty or criminal intimidation. She also admits that even after filing of divorce suit, the respondent used to come to Village Kotagaon to meet his son but was not interested in meeting the appellant.
6. Considering the entirety of the evidence on record, it does not appear that the respondent has ever treated the appellant with such marital cruelty, which would furnish a ground for allowing a decree of divorce on the ground of commission of cruelty or desertion.
7. Since the appellant herself admits in para 11 of her deposition that she is not willing to join the company of the respondent husband, there cannot be any decree for divorce on the ground of desertion. The said decree can be allowed only when one of

the spouse is willing to join the company of the other spouse but is not allowed to join the company by the first spouse.

8. In our considered opinion, there is no illegality or perversity committed by the Trial Court while dismissing the appellant's suit for grant of decree of divorce. The appeal has no substance. It deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge

Nirala