

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 295 of 2018**

1. Smt. Nileshwari W/o Shri Surendra Kumar Verma Aged About 22 Years R/o Village Chicha, Bhothi, District Durg, Chhattisgarh

---- Appellant**Versus**

1. Surendra Kumar Verma S/o Krishna Verma Aged About 23 Years R/o Village Sandongari, P. S. Gatapar, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Mirza Hafeez Baig, Advocate
Shri Shaleen Singh Baghel, Advocate

Hon'ble Shri Prashant Kumar Mishra, J**Hon'ble Smt. Rajani Dubey, J****Judgment on Board****By****Prashant Kumar Mishra, J.****17/05/2019**

1. Appellant/wife has preferred this appeal to call in question the legality and validity of the impugned judgment and decree whereby the trial Court has allowed the respondent/ husband's prayer for grant of decree of divorce.
2. Parties were married on 27-4-2016. Wife stayed in her marital house for about a month and thereafter, returned to

her parental house without any lawful reason. According to the husband, he along with relatives and elderly members of the society went to bring back his wife about 3-4 times, but she refused to join the matrimonial chord. She wrote two letters to the husband stating that she is not happy with the marriage and if he insists to keep her, he may be murdered and further that if the family members create pressure upon her for living together she may commit suicide. It is also stated by the husband that during the caste panchayat also the wife refused to join the husband's company. The wife sent SMS messages to the husband by using pseudonymous name. In such messages she would text embarrassing facts. Husband would further state that his wife is accustomed to lead an independent life, therefore, she desires to be independent and for all these reasons he is entitled for decree of divorce on the ground of cruelty.

3. After service of notice, the wife appeared before the Family Court on 9-10-2017, however, she did not file any written statement. She continued to appear before the Family Court on 6-11-2017 & 11-12-2017 but again failed to file her written statement. On two further dates i.e. 8-1-2018 & 6-2-2018 the husband appeared, but the wife remained absent. On 13-3-2018 both the parties were present and last opportunity was allowed to the wife for filing written

statement, but once again she failed to appear before the Family Court on 10-4-2018 and did not file her written statement as well. When she again failed to appear on 12-4-2018 the Family Court proceeded *ex parte* and recorded *ex parte* evidence of the husband.

4. Record contains documents from Ex.P/1 and Ex.P/2C to P/5C, which are the marriage invitation card and letters written by the wife to the husband. Screen shot of the text messages sent by the wife to the husband have also been filed, but the same have not been proved. In the letters written by the wife to the husband the authenticity of which has not been questioned either before the Family Court or before this Court, she would write that she does not love him and is not willing to reside with him. In one of the letter (Ex.P/3C) she would admit that she has married him under compulsion to pay respect to her parents and to save them from embarrassment. Ex.P/4C is the panchnama recorded during pachayat meeting signed by the parties to the appeal recording that the wife refused to join the company of her husband. She also admitted during the panchayat proceedings that she has once tried to consume poison.
5. Learned counsel appearing for the appellant/wife has argued that the wife deserves one opportunity to contest the suit, however, having perused the order sheets of the Family

Court, we are not convinced with the submission for the reason that despite appearing before the Family Court on different dates of hearing she did not file written statement nor moved an application for setting aside the *ex parte* proceedings.

6. From the very beginning it was the case of the husband that the wife is denying to lead her marital life by joining his company and that she has written several letters expressing her wishes to live separate, but despite the said averments she did not file any written statement to controvert the plaint averments.
7. In our considered opinion, the husband has proved mental cruelty, which reflects from her conduct of not joining the company of the husband after one month of marriage without any lawful reason and writing letters to him stating that she does not love him nor is willing to reside with him. Such conduct and attitude of the wife amounts to mental cruelty. The contents of the divorce petition and the statement of the husband having not been controverted or contested by the wife before the Family Court, the impugned judgment and decree does not suffer from any illegality or infirmity.
8. Had it been a case where the wife was proceeded *ex parte*

without proper service of notice or for mistake of Lawyer, etc., we would have remitted the matter back to the trial Court, but the facts emerging from the record would not refer to any such situation nor any such plea has been raised at the bar, therefore, no interference is warranted with the impugned judgment and decree passed by the Family Court.

9. As an upshot, the instant appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

Gowri