

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 222 of 2016

- Tuleshwar Singh, S/o Mr. Ramsuchit Singh Thakur, aged about 32 years, R/o Village- Bhilai Bazar Chowk, Hardibazar, Thana- Kusmunda, Tehsil- Katghora, District- Korba, Chhattisgarh. **---- Appellant.**

Versus

- Smt. Maneesha Devi W/o Tuleshwar Singh, aged about 30 years R/o Village- Dindori, Thana And Tehsil- Lormi, District Mungeli, Chhattisgarh. **---- Respondent.**

For the Appellant :- Mr. Achyut Tiwari, Advocate.
For the Respondent :- Mr. Aman Kesharwani, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

30.09.2020

Compendiously stated factual scenario leading to the disposal of instant appeal is that the appellant and the respondent herein had tied a nuptial knot on 25.05.2004, but unfortunately their conjugal bliss lasted for a very limited period of just 3 months. What happened with the passage of this short period of 3 months was that the father of the respondent/wife came to the house of appellant/husband and took his daughter (respondent herein) with him to his house. The pleadings demonstrate that the respondent/wife lived in her parental home for about 10 long years and never turned up to her matrimonial house even after the best efforts made by the appellant/husband. This non responsive attitude of the wife made the appellant/husband file an application under Sections 97-98 Code of Criminal Procedure (hereinafter referred to as “**Code**”) before the Sub Divisional Magistrate, Katghora but as the wife gave a specific reply to the effect

that she lived with her parents out of her own freewill, the same was dismissed vide order dated 11.06.2014 (Annexure-A/2). Subsequently, to show the goodwill gesture to keep the respondent/wife with him, the appellant/husband moved an application under Section 9 of the Hindu Marriage Act for restitution of Conjugal Rights but it also met the fate of rejection vide order dated 11.03.2015. Meanwhile, on 11.12.2014, respondent/wife moved an application seeking maintenance of Rs.6000/- per month, which came to be allowed in part by ordering the maintenance of Rs.1200/- per month to be paid by the appellant/husband vide order dated 09.11.2015 (Annexure-A/4). All this eventually made the husband file the present suit (Civil Suit No.39-A/2015) seeking decree of dissolution of marriage which however came to be dismissed by the Family Court (Camp Court), Katghora, District Korba vide judgment and decree dated 09.09.2016. It is this judgment which gave rise to the filing of present appeal.

2. Learned counsel for the appellant/husband submits that from the pleadings and evidence of the witnesses it is crystal clear that for no rhyme or reason the respondent/wife left the matrimonial home of the appellant/husband and did not turn up for a continuous long period of 12 years even after the best possible endeavour made by the appellant/husband. He submits that though the appellant has clearly made out a case of desertion for a continuous period of not less than 2 years as provided under Section 13 (1) (ib) of the Hindu Marriage Act but yet the Court below has erroneously framed an issue of cruelty meted out by the wife to her husband and decided the same against the appellant/husband, abruptly dismissing the suit filed by the husband. He further submits that even in the conciliation proceedings

the wife maintained an adamant attitude of not residing with the appellant as his wife. He further submits that had the appellant/husband really subjected the wife to cruelty raising a demand for dowry, it was always open for the wife to take-up legal remedies against him, but her silence maintained all throughout till the proceedings were initiated by the appellant/husband speaks in volumes against her. He thus submits that the judgment and decree under challenge in this appeal are not based on the relevant pleadings and proof available in this case and therefore, the same are liable to be set aside by allowing this appeal.

3. On the other hand, counsel for the respondent/wife lends full-fledged support to the judgment and decree under challenge in this appeal and holds the same to be strictly based on the material available on record. He submits that since the appellant/husband had not been in a position to prove the cruelty by wife, learned Family Court has been fully ratiocinate in dismissing the suit filed by the appellant/husband and therefore, the same does not warrant any interference by this Court in this appeal.

4. Having heard counsel for the rival parties at a great length and given a thoughtful consideration to the standpoints put-forth on their behalf, one thing which comes to the surface is that after marriage which was solemnized on 28.05.2004, the appellant and the respondent lived together just for a scanty period of 3 months or so and thereafter the father of the respondent/wife took her with him. Pleadings also reveal that after leaving the house of the appellant/husband, the wife did not look back to the matrimonial home and resided at her parents' house for a longer period of beyond 10

years at a stretch. It is also manifest from the record that the appellant/husband made persistent efforts to take back his wife and also filed an application under the Code of Criminal Procedure as also under the Hindu Marriage Act showing his *bona fides* to keep the respondent with him but they all went in vain. The wife did not even come to attend the marriage of her brother-in-law (brother of the husband) though she was invited for the same. While responding to the applications filed under Sections 97 and 98 of the Code as also the one under Section 9 of the Hindu Marriage Act for restitution of Conjugal Rights, the respondent/wife remained apathetic towards the husband and did not show her inclination to live in his company any longer. Even the conciliation efforts did not bear any fruit where the wife feigning her subjection to cruelty at the hands of husband did not give her nod for getting back to the matrimonial home. If a composite analysis of the afore-stated components is kept in mind, the learned Family Court must have based its finding revolving around the issue of desertion and not the cruelty, as has been erroneously recorded by it in the judgment impugned. Right throughout the appellant has time and again taken a plea that just after 3 months blissful conjugal accompaniment, the respondent/wife left the matrimonial home and lived in her parents' house for a considerable long period of 10 years. If a glimpse is given to the provision of Section 13 (1) (ib) of the Hindu Marriage Act, the marriage can be dissolved by a decree of divorce on the ground that the other party has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of petition. However in this case it is undisputed that the respondent lived in the house of her parents for a long period of 10

years and did not pay any heed to the efforts made by the husband, learned Family Court should have framed an issue of desertion and then decided the same on the basis of pleadings and proof available on record, instead of dismissing the suit by framing and dealing with the issue of cruelty. The approach taken by the Family Court does not appear to be properly based on the pleading and proof and being so cannot be allowed to stand.

5. In view of above, the appeal is allowed, the judgment and decree questioned in this appeal are set aside and the matter is remanded back to the learned Family Court with a direction to again frame an appropriate issue adhering to the pleadings and proof on record and decide the case by summoning the relevant witnesses as early as possible. The parties are also expected to render their best possible co-operation ensuring early disposal of the case. The judgment and decree be drawn accordingly.

6. Appeal thus allowed as above.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge