

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 112 of 2016**

- Mela Bai, Aged About 37 Years (Wrongly Mention as 32 Year), W/o Ramu, by Caste Gond, R/o Munund, Thana and Tahsil Janjgir District Janjgir Champa Chhattisgarh.

---- Appellant**Versus**

- Ramu S/o Narayan, Aged About 38 Years By Caste Sabriya, R/o Sonthi Piparda Thana and Tahsil Champa, District Janjgir Champa Chhattisgarh.

---- Respondent

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- Shri Parag Kotecha, Advocate for the appellant.
 - Smt. Nirupama Bajpai, Advocate for the respondent.
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D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****03.07.2020**

This appeal is directed against the impugned judgment and decree dated 07.05.2016 passed by Family Court, Raipur in Civil Suit No. 75-A/2013 by which respondent's application for grant of decree of divorce has been allowed by the Family Court.

2. Respondent/husband moved an application under Section 13 of the Hindu Marriage Act for grant of decree of divorce on the pleadings that about 11 years prior to the date of filling of application, marriage of Ramu was solemnized with Mela Bai and out of their wedlock, they were blessed with two children. Further pleading was that on 02.03.2003, when brother-in-law - Guddu came to take his sister, she was sent along with her brother but later on realized that brother-in-law and father-in-law were not willing to send the wife back to the

matrimonial house. A community meeting was also called in which the father-in-law entered into quarrel and refused to sent Mela Bai back to matrimonial house. It is also pleaded that thereafter, husband Ramu applied for conciliation before Counselling Center in police station Champa complaining that his wife has been forcefully retained in her parental house and even though the counsellor in the police Station advised the wife to go back to matrimonial house, she did not come back. According to pleadings, a case of commission of offence under Section 498-A IPC was registered on the report of the wife which ended in husband's acquittal vide order dated 06.11.2007. It is also pleaded that, though, the appellant had moved application under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights, there also, the wife refused to come along with the husband. It was pleaded that in proceedings under Section 125 Cr.P.C. initiated by the wife, the application was rejected. It was pleaded that since 2005 the wife is not residing with the husband and therefore, a decree of divorce was sought.

3. In the written statement filed by the appellant/wife, while denying all the allegations made in the application, in the additional pleadings it was stated that the husband was demanding Rs. 30,000/- and a motorcycle but the same could not be fulfilled as family of the wife is very poor and due to that, husband and his family members used to beat and torture the wife therefore, she had to lodge police report.

4. On the basis of pleadings of the parties, the learned Family Court framed as many as four issues. As husband alleged cruelty, apart from framing an issue of desertion, the learned Family Court

also framed issue that as to whether Mela Bai subjected her husband to cruelty.

5. The learned Family Court, after allowing the parties to lead their respective evidence, came to the conclusion that the wife Mela Bai deserted her husband since prior to two years from the date of filing of the application. However, ground of cruelty was not found proved. Accordingly, a decree of divorce on the ground of desertion was granted in favour the husband/respondent, giving rise to this appeal by the appellant/wife.

6. Assailing legality and validity of impugned judgment and decree of the Family court, learned counsel for the appellant argues that the learned Family Court has neither properly appreciated the pleadings not the evidence before recording finding regarding proof of desertion of respondent/husband by the appellant/wife. He would argued that the learned Family Court ought to have appreciated the pleadings and evidence keeping in mind that that the parties were not legal experts and the case was contested by the respective parties, without any legal assistance. The learned Court below, without properly appreciating clear pleading and evidence of the wife that the husband and his family members, after about 3-4 years of their marriage, started subjecting the appellant/wife to cruelty which constituted a reasonable cause, wrongly held that a case of desertion was made out. Referring to the admission made by the respondent/husband in his cross-examination that when he had gone to the house of the wife, wife had requested her to stay for at least a week itself is proof that there was no *animus deserendi* on the part of the wife to desert her husband. Learned counsel for the appellant also argued that as far as

the case of the respondent/husband with regard to desertion is concerned, the pleading and evidence in this regard are vague and not very specific. He would submit that the date from which the wife is alleged to have left the matrimonial house have also been differently stated in the pleadings and in the evidence therefore, the entire case for grant of decree of divorce requires remand for proper and effective trial on various issues as framed by the trial Court.

7. On the other hand, learned counsel for the respondent would argue that the wife, neither in her pleadings nor in evidence, came out with specific denial of the pleaded fact that she was residing separately from her husband. She only sought to advance a case that it was because of cruelty that she was residing separately. On this aspect, no cogent and clinching evidence was led. Further it has also come on record that criminal case alleging commission of offence under Section 498-A IPC also ended in husband's acquittal. Learned counsel for the respondent further argued that once the wife fails to prove any reasonable cause, admission that she was living separately since long, makes out case for grant of decree of divorce on the ground of desertion.

8. We have heard learned counsel for the parties and perused the records and the impugned judgment.

9. The learned Family Court has granted decree of divorce on the ground of desertion taking into consideration the pleadings and evidence particularly that the wife has admitted in her evidence that she is residing separately from her husband and that the wife has failed to prove case of cruelty meted out to her.

10. The pleadings made in the application for grant of decree of divorce is based on the pleadings that on 02.03.2003, elder brother of the wife, Guddu had come to matrimonial house to take his sister and at that time the husband allowed her to go to her parental house for 3-4 days but thereafter, he came to know that the brother and father were not willing to sent her back. Thereafter meeting was called and there also they refused to sent her back. He has also pleaded that though he submitted application in Police Station Champa, for counselling but even thereafter, she did not come back. He has also pleaded that the criminal case ended in acquittal vide judgment dated 06.11.2007. There is specific pleading that in proceedings under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights also, wife did not come back. In the evidence, husband has stated in his affidavit under Order 18 Rule 4 CPC, facts which were pleaded by him in the plaint. There appears to be discrepancy in so far as dates on which the wife had gone back to her parental house. In Para 3 of affidavit it is stated that on 01.03.2008, uncle of the wife had come but as the children were not keeping well, the wife was not sent. In the affidavit it has been stated on 02.03.2008 brother-in-law Guddu had come, thereafter, the wife had gone to the matrimonial house and thereafter, she did not come back despite Panchayat meeting, application made before the police station and she also refused to come to matrimonial house in proceedings for restitution of conjugal rights. These specific facts which have been pleaded in the evidence had not been controverted, particularly with regard to the wife leaving the matrimonial house and residing in her parental house have not been controverted in the cross-examination. What has been sought to

be elicited in the cross-examination is that the applicant/husband was subjecting his wife to cruelty. On the other hand, what has been elicited in the cross-examination is that the husband had gone to parental house to take the wife back but she had asked the husband to stay there for one week. Therefore from this evidence, Uncontroverted of testimony is that the wife had left the matrimonial house at least on 02.03.2008 and since then she did not come back. Moreover, specific evidence, supported by pleadings that after the wife went back to parental house on 02.03.2008, attempts were made by the husband to bring her back by submitting application in the Police Station Champa, moving application under Section 9 of the Hindu Marriage Act, for Restitution of Conjugal Rights have also not been controverted. Specific statements made in affidavit by the husband that he has been acquitted in criminal case has also not been disputed.

11. The other two witnesses namely Arjun and Shriram have also supported the case of the husband on the aforesaid aspects and in their cross-examination also, while not disputing the fact that the wife had left the matrimonial house, suggestions have been given to the witnesses that the wife was subjected to cruelty by the husband, which suggestion has been denied. Thus, the evidence of the husband that the wife left the matrimonial house on 02.03.2008, that a community meeting was called in which the wife and her father and brother refused to send her back to matrimonial house, on application for counseling filed before the Police Station Champa, wife refused to come back, prosecution of the husband ending up in acquittal and that in proceedings under Section 9 of the Hindu Marriage Act for

Restitution of Conjugal Rights, the wife refused to come back to matrimonial house are uncontroverted evidence and there is no reason to disbelieve them.

12. The appellant/wife in her evidence came out with the case that 3-4 years after marriage and birth of two children, she used to be tortured by her husband, father-in-law, mother-in-law, brother-in-law, sister-in-law and every member in the family. However, no cause has been shown. Even according to the appellant/wife these cruelty started after 3-4 years of marriage after two children were born. No cause is shown. No other evidence of any kind of injury has been brought on the record. As to when demand of motorcycle and money was made has not been stated. In the evidence, how much money was demanded and by whom, has also not been stated. In Paragraph 5 her affidavit, she states that she is ready to reside with her husband provided the husband resides separately with her and children. In her cross-examination she has admitted that she is living separately since last 10 years, she has also admitted that the appellant had come to her and approached her to take her back but she refused to go back to the matrimonial house. Lastly she herself states in her cross-examination that few years before the husband had come to take her back to matrimonial house then she insisted the husband that if he stays there in her parental house for one year then only she will go back to matrimonial house. The evidence of other witnesses of the wife namely Ramnath and Muniram, are equally vague and their assertion in the evidence that 3-4 years after marriage and after the children were born out of wedlock wife was subjected to cruelty, as stated by the wife, has been reiterated but there are no specific

evidence with regard to demand of money and motorcycle but only general allegations have been made.

13. From consideration of overall evidence on record, it is thus clearly proved that the appellant/wife deserted her husband long back and in any case, the period of desertion was more than two years on the date of filling of application for grant of decree of divorce i.e. on 28.06.2013. The appellant having failed to prove a case of cruelty as a reasonable cause for living separately coupled with her admission of living separately from her husband, amounts to desertion within the meaning of the said word as explained in Section 13 (1) (i-b) of the Hindu Marriage Act. Therefore, in our considered opinion, learned Family Court, has not committed any illegality in arriving a conclusion that the appellant/wife deserted her husband and thus respondent entitled to decree of divorce on the ground of desertion.

14. In the result, appeal is dismissed. Let appellate decree be drawn accordingly.

We noticed that on 21.10.2016, this Court had passed an order granting litigation expenditure of Rs. 5,000/- and 3,000/- per month as maintenance pendelite to the appellant. In this regard, it is directed that whatever amount has already paid to the appellant/wife shall not be claimed to back by the respondent/husband.

Moreover, further, though a prayer has been made by learned counsel for the appellant, that order for grant of permanent alimony under Section 25 of the Hindu Marriage Act, may be granted in favour of the appellant/wife as despite there being divorce is entitled to permanent alimony under Section 25 of the Hindu Marriage Act, we are not inclined to pass any order on an oral prayer. We grant liberty to the appellant/wife to separately move application under Section 25 of the Hindu Marriage Act,

before the Jurisdictional Family Court. If said application is filed, the Family Court shall decide the application in accordance with law.

Let appellate decree be accordingly drawn.

Parties to bear their respective costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge