

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 122 of 2019

Avinash Soni S/o Shri Murli Soni Aged About 40 Years Occupation Head Constable, R/o Near Advani House, Mahamaya Mandir Road Kumhari District Durg Chhattisgarh.

---- Appellant

Versus

Smt. Vijay Laxmi Soni W/o Shri Avinash Soni Aged About 35 Years C/o Father Rambharosa Soni, R/o Near Matches Factory, Shanti Nagar, Bhilai - 3, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

For Appellant	:	Shri O.P. Sahu, Advocate
For Respondent	:	Shri G.R. Burman Advocate

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

11/02/2020

Per Manindra Mohan Shrivastava, J.

1. With the consent of learned counsel appearing for the respective parties, this appeal is heard finally.
2. This appeal is directed against order dated 22.02.2019 passed in Civil Suit No.666 of 2018 by which the learned Family Court has held the suit filed by the appellant, as barred by *res judicata* and, therefore, rejected the plaint under Order 7 Rule 11 CPC.
3. Learned counsel for the appellant would argue that even though earlier suit for grant of decree of restitution of conjugal rights or in alternative, decree of divorce on the ground of desertion and cruelty was dismissed by the trial Court and affirmed by the higher Courts up to the Supreme Court, the appellant has again filed civil suit seeking decree of restitution of conjugal rights. He would submit that the present suit has been filed on a fresh

cause of action and, therefore, it is not barred under the Law.

4. On the other hand, learned counsel for the respondent would submit that a perusal of the application under Section 9 of the Hindu Marriage Act only reveals that case is based only on the earlier cause of action on which verdict has already been given and attained finality.
5. We have gone through the records of the case particularly the application under Section 9 of the Hindu Marriage Act filed by the appellant before the Court below. The pleading of the case reveal that application for restitution of conjugal rights has been filed on the pleading that on 13.10.2004, respondent-wife has deserted the husband and residing separately. A perusal of the judgment and decree dated 27.4.2010 passed in earlier Civil Suit No.86-A of 2007 reveals that in that suit also, cause of action was that wife deserted the husband in the year 2004. There is no pleading to the effect that after decision on the earlier suit, the wife again came back to matrimonial house, resided with the appellant and then again deserted him. Therefore, the present suit also appears to be based on the same cause of action as in the earlier suit.
6. In that view of the matter, fresh suit is apparently barred by *res judicata* and learned Court below has committed no illegality in rejecting the plaint.
7. The appeal is therefore dismissed.
8. Learned counsel for the appellant, at this stage, submits that this order may not come in the efforts made by the appellant to seek decree of divorce by mutual consent.
9. Only by way of clarification, it is observed that the order passed in this case shall not come in the way of appellant in taking any other course available to him under the law including the application for grant of decree of divorce on mutual consent.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge